Petition

81-806

No. ———

Office Supreme Court, U.S.
FILED
OCT 28 1981
ALEXANDER L. STEVAS,
CLERK

Supreme Court of the United States

OCTOBER TERM, 1981

ROBERT B. LORD, ET AL.,
Petitioners,

v.

LOCAL UNION NO. 2088, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION

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QUESTIONS PRESENTED FOR REVIEW

I. Was the Court Below Correct in Denying Florida the Right To Regulate Union Security Agreements Throughout Its Geographic Territory?

II. Was the Court Below Correct in Holding That an Existing Right-to-Work Law of a State Ceases To Be Effective on a Federal Enclave When Exclusive Legislative Jurisdiction Therein Is Ceded to the United States?

PARTIES TO THE PROCEEDING

The Petitioners are Robert B. Lord, Ralph M. Coletti, J. H. Figgatt, Fred W. Griffis, William C. Hay and A. R. Wagner.

The Respondents are Local Union No. 2088, International Brotherhood of Electrical Workers, AFL-CIO, and RCA International Service Corporation.

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Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION

The Petitioners pray that a Writ of Certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on June 4, 1981.

REPORT OF OPINION BELOW

The opinion of the Court of Appeals is reported at 646 F.2d 1057.

STATEMENT OF JURISDICTION

The opinion of the Court of Appeals was published on June 4, 1981. Petitioners' petition for rehearing

en-banc was denied on July 31, 1981. This Petition For a Writ Of Certiorari was filed within 90 days of the latter date. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Labor Management Relations Act, 1947, Sections 8 (a)(3) and 14(b), 29 U.S.C. §§ 158(a)(3) and 164(b):

> § 158. Unfair labor practices
>
> (a) It shall be an unfair labor practice for an employer—
>
> (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice)to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, ...
>
> § 164. Construction of provisions
>
> (b) Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

STATEMENT OF THE CASE

The Petitioners are employees of Respondent RCA International Service Corporation (RCA). They are represented for labor-management relations purposes by Respondent Local Union No. 2088, International Brotherhood of Electrical Workers, AFL-CIO (Local 2088). Their work sites are either Patrick Air Force Base, Florida, or Cape Canaveral Air Force Station, Florida. Exclusive legislative jurisdiction over both of these installations was ceded by Florida to the United States and accepted by it. Jurisdiction over Patrick was ceded and accepted prior to the time that Florida had a Right-to-Work law and jurisdiction over Canaveral was ceded and accepted after Florida enacted a Right-to-Work law.

Beginning with the month of March, 1979, RCA and Local 2088 agreed to and began enforcing an agency shop provision in their collective bargaining agreement which required the plaintiffs as a condition of employment to pay fees equal to dues to Local 2088. Following the implementation of the agreement Petitioners filed their complaint in the Middle District of Florida alleging that the implementation of the agreement at both installations violated Florida's Right-to-Work law. On a record of stipulated facts the District Court held that implementation of the agreement was lawful at Patrick and unlawful at Canaveral. (29a.)

RCA and Local 2088 appealed to the Fifth Circuit and Petitioners cross-appealed. The Court of Appeals affirmed as to Patrick and reversed as to Canaveral. (1a.) Petitioners petition for rehearing en banc was denied on July 31, 1981. (32a.) This Petition was filed within ninety days of the latter date.

BASIS FOR DISTRICT COURT JURISDICTION

Jurisdiction in the District Court was based upon 28 U.S.C. § 1337, § 2201 and § 2202 and 29 U.S.C. § 185.

REASONS FOR GRANTING THE WRIT

I. THE QUESTIONS PRESENTED INVOLVE IMPORTANT QUESTIONS OF FEDERAL LAW WHICH HAVE NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

The States of Alabama, Arizona, Arkansas, Florida, Georgia, Iowa, Kansas, Louisiana, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia and Wyoming have enacted Right-to-Work laws. The total acreage and federal acreage within each of these states is indicated in the following table:[1]

	Total Acreage	Federal Acreage	%
ALABAMA	32,678,400	1,122,288	3.43
ARIZONA	72,688,000	32,014,276	44.04
ARKANSAS	33,599,360	3,358,291	9.99
FLORIDA	34,721,280	4,040,945	11.63
GEORGIA	37,295,360	2,277,361	6.10
IOWA	35,860,480	227,448	.63
KANSAS	52,510,720	733,015	1.39
LOUISIANA	28,867,840	1,098,595	3.80
MISSISSIPPI	30,222,720	1,730,568	5.72
NEBRASKA	49,031,680	712,173	1.45
NEVADA	70,264,320	60,506,114	86.11
NORTH CAROLINA	31,402,880	2,050,852	6.53
NORTH DAKOTA	44,452,480	2,386,385	5.36
SOUTH CAROLINA	19,374,080	1,176,390	6.07

[1] Source: *Public Lands Statistics*, Bureau of Land Management, U.S. Department of the Interior, 1979.

	Total Acreage	Federal Acreage	%
SOUTH DAKOTA	48,881,920	3,492,309	7.14
TENNESSEE	26,727,680	1,853,936	6.93
TEXAS	168,217,600	3,408,655	2.02
UTAH	52,696,960	33,529,967	63.62
VIRGINIA	25,496,320	2,409,748	9.45
WYOMING	62,343,040	30,329,556	48.64
TOTALS	957,333,120	188,458,872	19.68

The practical effect of the decision below is to remove approximately 20% of their territory from these states and prevent them from legislating with respect to a subject over which Congress has given them plenary power to establish policy throughout the extent of their geographic territory.

Section 14(b) of the Labor Management Relations Act, 1947, 29 U.S.C. § 164(b), provides:

> (b) Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

The decision below is premised on an interpretation which is as though the statute read:

> (b) Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory (*excepting lands under the exclusive legislative jurisdiction of the United States*) in which such execution or application is prohibited by State or Territorial law.

Of course Congress did *not* include the parenthetical phrase when it enacted the statute and there is no logical reason for the court below to interpret the statute as though it had done so. Section 14(b) is a grant of power to the States to legislate. *Retail Clerks International Ass'n* v. *Schermerhorn*, 373 U.S. 746 (1963). In discussing the agency shop agreement involved in that case Mr. Justice White, speaking for the Court said:

> We have concluded that the contract involved here is within the scope of § 14(b) of the National Labor Relations Act and therefore is congressionally made subject to prohibition by Florida law. (373 U.S. at 747.)

And later in the opinion in commenting on the interrelationship between sections 8(a)(3) and 14(b) he said:

> As is immediately apparent from its language, § 14(b) was designed to prevent other sections of the Act from completely extinguishing state power over certain union-security arangements. And it was the proviso to § 8(a)(3), expressly permitting agreements conditioning employment upon membership in a labor union, which Congress feared might have this result. It was desired to "make certain" that § 8(a)(3) could not "be said to authorize arrangements of this sort in States where such arrangements were contrary to the State policy." H.R.Conf.Rep.No. 510, 80th Cong., 1st Sess. 60, 1 Leg.Hist.L.M.R.A. 564.
>
> The connection between the § 8(a)(3) proviso and § 14(b) is clear. Whether they are perfectly coincident, we need not now decide, but unquestionably they overlap to some extent. At the very least, the agreements requiring "membership" in a labor union which are expressly permitted by

> the proviso are the same "membership" agreements expressly placed within the reach of state law by § 14(b). (373 U.S. at 751.)

And Mr. Justice Douglas in *Retail Clerks International Ass'n* v. *Schermerhorn,* 375 U.S. 96, 102-03 (1963) had this to say about the interplay between sections 8(a)(3) and 14(b):

> As already noted, under § 8(a)(3) a union-security agreement is permissible, for example, if the union represents the employees as provided in § 9(a) (subject to rescission of the authority to make the agreement as provided in § 8(a)(3)). Those are federal standards entrusted by Congress to the Labor Board. Yet even if the union-security agreement clears all federal hurdles, the States by reason of § 14(b) have the final say and may outlaw it. There is thus conflict between state and federal law; but it is a conflict sanctioned by Congress with directions to give the right of way to state laws barring the execution and enforcement of union-security agreements. It is argued that if there is a violation of a state union-security law authorized by § 14(b), it is a federal unfair labor practice and that the federal remedy is the exclusive one. It is urged that that course is necessary if uniformity is to be achieved. But § 14(b) gives the States power to outlaw even a union-security agreement that passes muster by federal standards. Where Congress gives state policy that degree of overriding authority, we are reluctant to conclude that it is nonetheless enforceable by the federal agency in Washington.

However, the court below refused to permit Florida's policy to override the contrary rule of section 8(a)(3). This results in an erroneous interpretation of the stat-

ute which is absolutely contrary to the Congressional intent expressed in the unambiguous language of the statute. By its plain terms section 14(b) is a retrocession of authority to the States to outlaw, within their geographic boundaries, all forms of union security agreements.

In effect the court below held that Patrick and Canaveral ceased to be a part of Florida when exclusive jurisdiction was ceded to the United States. Obviously, the two installations remained in Florida. As the Court said in *Howard* v. *Commissioners Of Sinking Fund,* 344 U.S. 624, 626 (1953)

> When the United States, with the consent of Kentucky, acquired the property upon which the Ordnance Plant is located, the property did not cease to be a part of Kentucky.

Similarly, Patrick and Canaveral remained in the State of Florida when jurisdiction was ceded to the United States. Because they are in the state, section 14(b) gives Florida the power to outlaw union security agreements at those installations. Section 14(b) is a retrocession to the States of the power to ban union security agreements throughout their territory.

Just suppose that each of the States and Territories passed and put into effect a Right-to-Work law. In that situation it would make no sense to preserve union security agreements as permissible under "federal law" on the various federal enclaves located throughout the country. The example does serve to show just how much sense it does make to interpret Section 14(b) as permitting each State to establish a rule for union security agreements which will be uniform for all territory within its geographic boundaries. The ex-

ample also establishes the fact that United States policy with respect to union security agreements, in fact, is the policy adopted by the individual states.

The question presented is one of first impression. The decision below amounts to a serious encroachment upon the States' authority under section 14(b). The importance of the question to the administration of the Act is apparent. Such a curtailment of State power should not be permitted unless approved by a majority of this Court. By refusing to follow the clearly expressed Congressional direction to permit State law to operate on union security agreements, the court below has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

Even if the court below were correct in its interpretation of section 14(b), it erred when it ruled that Florida's existing Right-to-Work law did not continue in force at Cape Canaveral when jurisdiction over that installation was ceded to the United States.

On October 24, 1955, the day before the United States accepted exclusive jurisdiction, Florida's Right-to-Work law was in full force and effect on the federally owned lands at Cape Canaveral. On that day at Cape Canaveral government contractors and representatives of their employees lawfully could not enter into a union security agreement. Such a result was affirmatively required by federal law—section 14(b) of the Act. The next day, when exclusive federal jurisdiction was accepted, federal deference to the status quo of a law prohibiting compulsory unionism did not change. It remained the same as before and so did the rule of state law forbidding such agreements. At least to that extent section 14(b) is a directive to

accept, and continue in force as federal law, a Right-to-Work law which exists at the time jurisdiction is ceded to the United States.

II. THE DECISION BELOW IS IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

A. Cape Canaveral

The Court of Appeals states the question is "whether the union security agreement before use (sic) is or is not legal under the respective laws of the two sovereigns." (4a.) It then looks solely to section 8(a)(3) to determine United States "law" with respect to union security agreements. But, section 14(b) is also United States "law" both before and after cession of jurisdiction to the United States. Florida had enacted a Right-to-Work law before jurisdiction over Cape Canaveral was ceded. Prior to cession of jurisdiction section 14(b) was a direction "to give the right of way to State laws . . ." *Retail Clerks International Association* v. *Schermerhorn,* 375 U.S. 96, 103 (1963); *Oil, Chemical & Atomic Workers* v. *Mobil Oil Corp.,* 426 U.S. 407, 417 (1976) (plurality opinion). After cession also section 14(b) was a direction "to give the right of way to State laws . . ." By failing to recognize that section 14(b) is "federal law" both before and after cession of jurisdiction the Court of Appeals misconstrues federal law and policy and fails to properly apply the teachings of *Schermerhorn* and *Mobil Oil* to the fact of this case. *And see, Paul* v. *United States,* 371 U.S. 245, 269 (1963).

B. Patrick Air Force Base.

In concluding that section 14(b) was not a retrocession of jurisdiction to the States to legislate with

respect to union security agreements on federal enclaves located within their borders the court below relied on *United States* v. *State Tax Commission,* 412 U.S. 363 (1973); *Paul* v. *United States,* 371 U.S. 245 (1963); *Hancock* v. *Train,* 426 U.S. 167 (1976) and *Humble Pipe Line Co.* v. *Waggoner,* 376 U.S. 369 (1964). These cases are inapposite because they involve factual situations where a State is attempting on enclaves to regulate the United States in its capacity as a sovereign (*State Tax Commission, Paul, Hancock*) or where the United States has not granted permission to impose a particular tax on an enclave (*Humble Pipe Line Co.*). The proper precedents of this Court which should have been, but were not, followed by the court below are those where the States have been granted permission to impose the particular tax involved (*Offut Housing Company* v. *County of Sarpy,* 351 U.S. 253 (1956)); where the State regulation does not affect sovereign rights of the United States but only functions to transfer the geographic area of the enclave from one political subdivision of the State to another (*Howard* v. *Commissioner of Sinking Fund,* 344 U.S. 624 (1953)); where jurisdiction over the enclave has been relinquished by the United States (*S.R.A., Inc.,* v. *State of Minnesota,* 327 U.S. 558 (1946); *Baltimore Shipbuilding & Dry Dock Co.* v. *City of Baltimore,* 195 U.S. 375 (1904)) and where an attempt is made to consider an enclave as not part of the surrounding State in order to deprive an individual therein of a substantive benefit granted by the State to individuals outside the enclave (*Evans* v. *Cornman,* 398 U.S. 419 (1970)). Of these precedents the most apropos is *Evans* v. *Cornman* where this Court specifically held that a federal enclave is "in" the surrounding State even though the enclave is under

the exclusive jurisdiction of the United States. In doing so the Court stated:

> Appellees clearly live within the geographical boundaries of the State of Maryland, and they are treated as state residents in the census and in determining congressional apportionment. They are not residents of Maryland only if the NIH grounds ceased to be a part of Maryland when the enclave was created. However, that "fiction of a state within a state" was specifically rejected by this Court in *Howard* v. *Commissioners of Louisville,* 344 U.S. 624, 627, 73 S.Ct. 465, 467, 97 L.Ed. 617 (1953), and it cannot be resurrected here to deny appellees the right to vote. (398 U.S. at 421-22.)

Just as NIH remained a part of Maryland when that enclave was created; so too did Patrick and Cape Canaveral remain a part of the State of Florida when those enclaves were created. Therefore union security agreements are unlawful at those installations because they are in the State of Florida and such agreements are prohibited by Florida law. This result is dictated by the clear and explicit language of section 14(b) and this Court's decision in *Evans* v. *Cornman.* By failing to follow the proper precedents of this Court, the court below reached an erroneous result which seriously interferes with the power granted to the States by section 14(b). Only this Court can correct this erroneous result. It should do so by granting the petition.

CONCLUSION

For the reasons stated, the petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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Appendix

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
UNIT B

June 4, 1981.

No. 80-5010

ROBERT B. LORD, et al.,
Plaintiffs-Appellees—Cross Appellants,

v.

LOCAL UNION NO. 2088, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO and RCA INTERNATIONAL SERVICE CORPORATION,
Defendants-Appellants—Cross Appellees.

Before TUTTLE, RONEY and VANCE, Circuit Judges.

VANCE, Circuit Judge:

This case presents the question whether the Florida right-to-work law[1] is applicable within federal enclaves over which the United States has exclusive jurisdiction. The district court held that such law is not applicable on

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[1] References to such laws persist in reflecting a determined stylistic difference. Unions, including those before use, typically use quotation marks and lower case: "right-to-work law" or even "so-called, right-to-work law." Plaintiff's counsel from the National Right to Work Legal Defense Foundation, like many employers, uses upper case and no quotation marks. Complete impartiality might dictate that we refer only to "state statutes governing union security agreements." For convenience, however, we choose to employ the appellation right-to-work law without quotation marks and using lower case. In doing so we imply nothing and expressly decline to take sides in the ongoing psychological warfare.

Patrick Air Force Base, jurisdiction of which was ceded by Florida to the United States prior to the adoption of that state's right-to-work law, but is applicable at Cape Canaveral Air Force Station which was ceded to the United States after adoption of the Florida right-to-work law. We affirm as to Patrick Air Force Base and reverse as to Cape Canaveral.

Plaintiffs are present or former employees of defendant RCA International Service Corporation (RCA). They are employed within a collective bargaining unit, the certified representative for which is defendant Local Union No. 2088, International Brotherhood of Electrical Workers, AFL-CIO (the Union).

The bargaining unit includes RCA technical and plant clerical employees at a number of different installations in Brevard County, Florida including the Kennedy Space Center, the Cape Canaveral Air Force Station and Patrick Air Force Base. Within the bargaining unit there were a total of 147 employees. Of these, fifteen were assigned to the Kennedy Space Center, forty-four were assigned to Cape Canaveral Air Force Station and eighty-eight were assigned to Patrick Air Force Base. All but twelve of the 147 employees were members of the defendant Union.

The collective bargaining agreement between the Union and RCA aplies to all employees within the unit and contains provisions whereby employees may exercise their seniority within seniority groups without distinction as to whether the job is at Kennedy Space Center, Cape Canaveral or Patrick Air Force Base.

On January 16, 1979 RCA and the Union amended the collective bargaining agreement to add a union shop provision which provided as follows:

> Section 3.04 UNION SHOP. It shall be a condition of employment that all employees of the Company

> covered by this Agreement who are members of the Union in good standing on the effective or execution date of this Agreement, whichever is later, shall remain members in good standing and those who are not members on the effective or execution date of this Agreement, whichever is later, shall on the thirty-first (31st) day following the effective or execution date of this Agreement, whichever is later, become and remain members in good standing in the Union. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after its effective or execution date, whichever is later, shall on the thirty-first (31st) day following the beginning of each employment, become and remain members in good standing of the Union.

Plaintiffs are not members of the Union. Pursuant to the amendment to the collective bargaining agreement they were notified by defendants that if they remained in the bargaining unit they would be required to join the Union or to pay the equivalent monthly dues to the Union commencing March 1, 1979 as a condition of continued employment. All of the plaintiffs who remained in the unit decided not to join the Union but elected to pay a sum equivalent to monthly dues. Each of the plaintiffs remaining in the unit has therefore paid the Union $16.00 a month since March, 1979. Notwithstanding the language of the agreement they have not and will not be required to become members of the Union.[2]

Plaintiffs brought this suit under Section 301 of The Labor Management Relations Act, 29 U.S.C. § 185, and the federal declaratory judgment statutes, 28 U.S.C. §§ 2201 and 2202, complaining that the agreement is pro-

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[2] The parties to the agreement apparently treat the provision as creating an agency shop rather than a union shop.

hibited by the constitution [3] and statutes [4] of the State of Florida (collectively referred to by the parties as the Florida right-to-work law). They sought declaratory and injunctive relief as well as reimbursement of monies paid to the Union pursuant to the agreement. The issue presented to the district court and to this court is a pure question of law. The parties have entered into a stipulation of facts and they have agreed that all facts required for the complete and final adjudication of the controversy are incorporated into that stipulation.

The controversy originally involved three locations including the Kennedy Space Center. All of the employees within the unit at the Kennedy Space Center were members of the Union and no plaintiff was employed at that facility. The district court found that the plaintiffs lacked standing to assert any claim concerning that location. The court's ruling in that respect was not appealed. As the controversy reaches this court it therefore involves enforcement of the collective bargaining agreement provisions only at Cape Canaveral Air Force Station and Patrick Air Force Base.

Under the Constitution the United States has the power to acquire land from the states for certain specified uses

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[3] Fla. Const. Art. I, § 6 provides:

> The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

[4] Fla. Stat. § 447.03 provides:

> Employees shall have the right to self-organization, to form, join, or assist labor unions or labor organizations or to refrain from such activity, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

and to exercise exclusive jurisdiction over such lands, which are known as federal enclaves[5] The jurisdiction exercised by the United States over federal enclaves is exclusive unless the deed of cession provides to the contrary or unless the cession is not accepted in the manner required by law. The parties do not dispute that both Patrick Air Force Base and Cape Canaveral Air Force Station are federal enclaves over which the United States has exclusive jurisdiction. The different treatment accorded to the two bases by the trial court is attributable to the time sequence involved in their cession to the United States and the adoption of the Florida right-to-work law. The following statement from the district court's memorandum decision correctly states the background to the present question:

> [T]he federal law of every enclave includes state law which was in force at the time of the cession, where such state law is not inconsistent with federal law or policy. *Pacific Coast Dairy, Inc. v. Department of Agriculture of California,* 318 U.S. 285, 294 [63 S.Ct. 628, 630, 87 L.Ed. 761] (1943); *James Stewart & Co. v. Sadrakula,* 309 U.S. 94 [60 S.Ct. 431, 84 L.Ed. 596] (1940); *Chicago, Rock Island and Pacific Railway Co. v. McGlinn,* 114 U.S. 542 [5 S.Ct. 1005, 29 L.Ed. 270] (1885). This assures that no new federal enclave, regardless of size, will be left without laws. *Mater v. Holley,* [5th Cir.] 200 F.2d [123] at 124. However, laws of the state adopted after the cession are without any force or effect on the federal enclave. *Pacific Coast Dairy, Inc. v. Department of Agriculture of California,*

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[5] U.S. Const. Art. I, § 8, cl. 17 provides: "The Congress shall have Power . . . To exercise exclusive Legislation in all Cases whatsoever . . . over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings . . . ."

318 U.S. at 294 [63 S.Ct. at 630]; *Vincent v. General Dynamics Corp.*, D.C., 427 F.Supp. 786 at 794-95.

Lord v. Local Union No. 2088, 481 F.Supp. 419, 427 (M.D. Fla. 1979).

Patrick Air Force Base was ceded to the United States prior to the 1944 amendment to the Florida constitution which added the right-to-work provision. The deeds of cession were dated in 1939 and 1940 and were accepted in 1940. Each of the deeds granted exclusive jurisdiction over the ceded land reserving only concurrent jurisdiction for service of civil and criminal process.[6]

Cape Canaveral Air Force Station, however, is located on land that was ceded to the United States by the State of Florida after the adoption of its right-to-work law. The deed of cession was signed and accepted in 1955 conveying exclusive jurisdiction over the ceded land also reserving only concurrent jurisdiction for service of civil and criminal process.

The district court reasoned therefore that Florida law could not be applied on Patrick Air Force Base but would apply on Cape Canaveral Air Force Station unless it conflicted with federal law or policy. In view of the provisions of section 14(b) of the National Labor Relations Act, 29 U.S.C. § 164(b), the district court concluded that there was no conflict and that the state's right-to-work law was applicable on Cape Canaveral Air Force Station. It is that ruling which RCA and the Union appeal.[7]

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[6] Retention of jurisdiction for service of process does not alter the conclusion that the United States has acquired exclusive jurisdiction in all respects material to our present consideration. *See United States v. State Tax Commission*, 412 U.S. 363, 372, 93 S.Ct. 2183, 2189, 37 L.Ed.2d 1 (1973).

[7] Appellants advance an alternative argument to the effect that the primary work situs of the unit as a whole (Patrick Air Force

Under plaintiff's reading of section 14(b) Florida was empowered to adopt a right-to-work law applicable to all federal enclaves geographically located within the confines of the state regardless of when they were ceded. On that basis they argue that the district court erred with respect to Patrick Air Force Base. The contention is before us on plaintiffs' cross-appeal.

The answer to two questions is determinative of both appeals: First, is there a conflict between the Florida right-to-work law and the law and policy of the United States? Second, does section 14(b) of the National Labor Relations Act grant power to the State of Florida to enact a right-to-work law that is applicable within a federal enclave?

Whether a conflict is perceived between federal and state law or policy depends to some degree on how the question is formulated. Plaintiffs urge that the question is whether the United States is for or against compulsory unionism. It concludes that it is neither, that the federal policy is one of benign neutrality. It urges that the neutrality of the United States does not conflict with Florida law.

We think that a more apt statement of the question is whether the union security agreement before use is or is not legal under the respective laws of the two sovereigns. Under Florida law, of course, it is not. Under the law of the United States, however, it clearly is legal. Section 8(a)(3) of the National Labor Relations Act, 29 U.S.C. § 158(a)(3) provides:

> [N]othing in this subchapter, or in any other statute of the United States, shall preclude an employer from

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Base) rather than the work place of individual employees should control. In view of our holding, it is not necessary that we reach this question.

> making an agreement with a labor organization . . . to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later . . . .

The provision of the statute was revised in 1947. The legislative history makes unmistakably clear that although Congress outlawed the closed shop it intended that the National Labor Relations Act should continue to permit lesser forms of union security such as the union shop.[8] Section 8(a)(3) has been held to apply to agency shop as

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[8] In enacting § 8(a)(3) Congress provided safeguards for employees subject to union and agency shop agreements. Nevertheless, as the Supreme Court observed in *Oil, Chemical and Atomic Workers v. Mobil Oil Corp.*, 426 U.S. 407, 416, 96 S.Ct. 2140, 2144, 48 L.Ed.2d 736 (1976), "Congress' decision to allow union-security agreements at all reflects its concern that, at least as a matter of federal law, the parties to a collective bargaining agreement be allowed to provide that there be no employees who are getting the benefits of union representation without paying for them." The Senate Committee Report discussing the revisions to § 8(a)(3) stated: "It seems to us that these amendments remedy the most serious abuses of compulsory union membership and yet give employers and unions who feel that such agreements promoted stability by eliminating 'free riders' the right to continue such arrangements." S.Rep.No. 105, 80th Cong., 1st Sess. 7 (1947). The House conference Report noted: "Both the House bill and the Senate amendment, in rewriting the present provisions of section 8(3) of the act, abolished the closed shop. The union shop and maintenance of membership, however, were permitted both under the house bill (sec. 8(d)(4) and under the Senate amendment (Proviso to sec 8(a)(3)). . . . Under the provisions of the conference agreement an employer is permitted to enter into [a union shop] agreement with a labor organization. H.Conf.R. 510, 80th Cong., 1st Sess. 41 (1947), U.S. Code Cong. & Admin. News 1947, pp. 1135, 1146. Thus, "As far as the federal law was concerned, all employees could be required to pay their way." *NLRB v. General Motors Corp.*, 373 U.S. 734, 741, 83 S.Ct. 1453, 1458, 10 L.Ed.2d 670 (1963).

well as union shop agreements, and both are mandatory subjects of collective bargaining under federal labor policy. *NLRB v. General Motors Corp.*, 373 U.S. 734, 83 S.Ct. 1453, 10 L.Ed.2d 670 (1963).

It seems clear to us that if the operative contract provision is expressly permitted under federal law and expressly prohibited under state law a conflict is presented. The Supreme Court recognized the conflict as such in *Retail Clerks International Association, Local 1625 v. Schermerhorn*, 375 U.S. 96, 84 S.Ct. 219, 11 L.Ed.2d 179 (1963) and again in *Oil, Chemical & Atomic Workers v. Mobil Oil Corp.*, 426 U.S. 407, 96 S.Ct. 2140, 48 L.Ed.2d 736 (1976) (plurality opinion). In the more recent case the Court stated:

> While § 8(a)(3) articulates a national policy that certain union-security agreements are valid as a matter of federal law, § 14(b) reflects Congress' decision that any State or Territory that wishes to may exempt itself from that policy. Section 14(b) allows a State or Territory to ban agreements "requiring membership in a labor organization as a condition of employment." We have recognized that with respect to those state laws which § 14(b) permits to be exempted from § 8(a)(3)'s national policy "[t]here is . . . conflict between state and federal law; but it is a conflict sanctioned by Congress with directions to give the right of way to State laws . . . ."

Id. at 416-17, 96 S.Ct. at 2144-2145 (footnote omitted) (quoting *Schermerhorn*, 375 U.S. at 103, 84 S.Ct. at 222).

Lower courts have similarly recognized a conflict between right-to-work laws and federal policy. *See, e.g., Vincent v. General Dynamics Corp.*, 427 F.Supp. 786, 796-800 (N.D.Tex.1977); *King v. Gemini Food Services, Inc.*, 438 F.Supp. 964 (E.D.Va.1976), *aff'd on the basis of the trial court opinion*, 562 F.2d 297 (4th Cir. 1977), *cert. denied*, 434 U.S. 1065, 98 S.Ct. 1242, 55 L.Ed.2d 766 (1978). In

King the court stated that the Virginia right-to-work law was not incorporated by the federal Assimilative Crimes Act (18 U.S.C. § 13) because "the policy of the Virginia statute conflicts with federal law. . . . Virginia law expressly prohibits union shop agreements while federal law expressly permits union shop agreements." 438 F. Supp. at 966. In the present case the district court expressly adopted the reasoning of *King* in concluding that Fla.Stat. § 447.14, which makes it a misdemeanor to violate the civil right-to-work statutes, did not apply to Cape Canaveral or Patrick under the Assimilative Crimes Act. The court stated that since union security agreements are not illegal under federal law, "it would be inconsistent and in conflict with such federal policy to apply a state law on a federal enclave which makes it a crime for an employer and a union to agree to such a union security clause." 481 F.Supp. at 430. The reasoning of the district court is sound: its only error in this case was its failure to apply this same reasoning to the application of the civil right-to-work statutes.

Since a conflict exists between section 8(a)(3) and state law, application of Florida law within a federal enclave is precluded unless, as plaintiffs argue, section 14(b) dictates otherwise. Section 14(b) states:

> Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

29 U.S.C. § 164(b).

Plaintiffs argue that this section resolves the conflict between Section 8(a)(3) and the Florida right-to-work law, giving "the right of way to State laws." *Schermerhorn*, 375 U.S. at 103, 84 S.Ct. at 222. Congress' direction in Section 14(b) "to give the right of way to State laws"

extends, however, only to the area over which the state has power to legislate. The Supreme Court has made it clear that states retain no such power with regard to federal enclaves even though they are physically located within their territory. In *United States v. State Tax Commission,* 412 U.S. 363, 93 S.Ct. 2183, 37 L.Ed.2d 1 (1973), the Court held that even the sweeping powers granted to the states by the twenty-first amendment of the Constitution did not permit the State of Mississippi to enact price regulations on sales of liquor to military bases.

> For our purposes here, it suffices to note that any legitimate state interest in regulating the importation into Mississippi of liquor purchased on the base by individuals cannot effect an extension of the State's territorial jurisdiction so as to permit it to regulate the distinct transactions . . . that involve only the importation of liquor into the federal enclaves which "are to Mississippi as the territory of one of her sister states or a foreign land."

412 U.S. at 378, 93 S.Ct. at 2192 (citations omitted.) It is apparent that while Section 14(b) gives the "right of way" to Florida law as to territory under Florida jurisdiction, it does not give Florida power to legislate over "federal enclaves which 'are to [Florida] as the territory of one of her sister states or a foreign land.'" *See also Paul v. United States,* 371 U.S. 245, 268, 83 S.Ct. 426, 439, 9 L.Ed.2d 292 (1963) where the Court stated, "Since a state may not legislate with respect to a federal enclave unless it reserved the right to do so when it gave its consent to the purchase by the United States, only state law existing at the time of the acquisition remains enforceable not subsequent laws."

Plaintiffs argue that Section 14(b) should be read as a delegation of power to the states to pass legislation applicable to federal enclaves. This contention finds no support whatever in the legislative history and was properly

rejected by the district court. 481 F.Supp. at 429. "Because of the fundamental importance of the principles shielding federal installations and activities from regulation by the States, an authorization of state regulation is found only when and to the extent there is 'a clear congressional mandate,' 'specific congressional action' that makes this authorization of state regulation 'clear and unambiguous.' " *Hancock v. Train,* 426 U.S. 167, 179, 96 S.Ct. 2006, 2013, 48 L.Ed.2d 555 (1976) (footnote omitted). Congress is not in the habit of ceding jurisdiction by implication. As examples cited by plaintiffs demonstrate, when Congress chooses to make state law applicable to federal enclaves it does so explicitly in a manner which permits no doubt or speculation. [9]

A more accurate characterization of Section 14(b) than that proposed by plaintiffs was stated in *Retail Clerks International Association, Local 1625 v. Schermerhorn*:

> In other words, Congress undertook pervasive regulation of union-security agreements, raising in the minds of many whether it thereby preempted the field under the decision in *Hill v. Florida,* 325 U.S. 538, [65 S.Ct. 1373, 89 L.Ed. 1782], and put such agreements beyond state control. That is one reason why a section, which later became § 14(b), appeared in the House bill—a provision described in the House Report as making clear and unambiguous *the purpose of Congress not to preempt the field.*

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[9] *See, e. g.,* 4 U.S.C. § 104 *et seq.*; 10 U.S.C. § 2671. As the Supreme Court commented in rejecting a contention that Congress had by implication abandoned exclusive jurisdiction over a military enclave, "When Congress has wished to allow a State to exercise jurisdiction to levy certain taxes within a federal enclave it has specifically so stated, as in the Buck Act, 4 U.S.C. §§ 104-110." *Humble Pipe Line Co. v. Waggonner,* 376 U.S. 369, 374, 84 S.Ct. 857, 860, 11 L.Ed.2d 782 (1964).

375 U.S. at 100-01, 84 S.Ct. at 221 (footnote omitted) (emphasis added). Our own review of the legislative history [10] underscores the correctness of the Supreme Court's description. The notion that in enacting Section 14(b) Congress may have somehow intended to adopt a special rule applicable to federal enclaves—as it has expressly done when it has so intended—is simply lacking in credible support. Plaintiff's arguments are properly addressed to Congress. Absent congressional action we are constrained by established precedent to hold that because Florida law conflicts with federal law and policy with respect to the legality of the collective bargaining agreement now before us, it cannot be enforced within either federal enclave.

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[10] The legislative history indicates that Congress enacted section 14(b) solely to make clear that federal law did not preempt the field with regard to compulsory unionism. The House Report states: "Since by the Labor Act Congress preempts the field that the Act covers . . . the committee has provided expressly . . . that laws and constitutional provisions of any State that restrict the right of employers to require employees to become or remain members of labor organizations are valid, notwithstanding any provision of the National Labor Relations Act." H.Rep.No. 245, 80th Cong., 1st Sess. 44 (1947). The original Senate bill did not contain a counterpart to section 14(b) because the Senate believed that the legislative history of the original National Labor Relations Act "made clear that the proviso in section 8(3) was not intended to override State laws regulating the closed shop." S.Rep.No. 105, 80th Cong., 1st Sess. 6 (1947). For the sake of clarification, however, the Senate conferees agreed to the incorporation of section 14(b) into the Act. The House Conference Report reflects this compromise: "It was never the intention of the National Labor Relations Act, as disclosed by the legislative history of that Act, to preempt the field in this regard so as to deprive the States of their powers to prevent compulsory unionism. . . . To make certain that there should be no question about this, section 13 was included in the House bill. The Conference agreement, in section 14(b), contains a provision having the same effect."

Summary judgment in favor of defendants as to the union security agreement applicable to employees at Patrick Air Force Base is AFFIRMED. Summary judgment in favor of plaintiffs as to the union security agreement applicable to employees at Cape Canaveral Air Force Station is REVERSED and the case REMANDED with directions that judgment be entered for defendants.

AFFIRMED in part, REVERSED and REMANDED in part, with directions.

RONEY, Circuit Judge, concurring in part and dissenting in part:

I concur with the decision to affirm the summary judgment in favor of defendant as to the union security agreement applicable to employees at Patrick Air Force Base.

I dissent from the decision to reverse the summary judgment in favor of plaintiffs as to the union security agreement applicable to employees at Cape Canaveral Air Force Station. As to Cape Canaveral, I would affirm the summary judgment for the reasons given in Chief Judge George C. Young's opinion under the heading, *B. The Union Security Agreement is Unenforceable on the Federal Enclave of Cape Canaveral Air Force Station. Lord v. Local Union No. 2088,* 481 F.Supp. 419, 427-28 (M.D. Fla. 1979).

In sum, I think the district court correctly held that "there is not a federal policy in favor of union security agreements," and that "the Florida right-to-work civil laws are not in conflict with any such federal law or policy," and therefore the Florida right-to-work laws "in effect at the time of deed of cession to the United States, and absent specific Congressional legislation to the contrary" are applicable on Cape Canaveral Air Force Station. 481 F.Supp. at 428.

I would affirm the district court in all respects.

IN THE UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF FLORIDA

ORLANDO DIVISION

Case No. 79-72-ORL-Civ-Y

ROBERT B. LORD, CHARLES E. BROWN, RALPH M. COLETTI, J. H. FIGGATT, FRED W. GRIFFIS, WILLIAM C. HAY, MELVIN R. PATRICK, and A. R. WAGNER, *Plaintiffs*,

vs.

LOCAL UNION No. 2088, IBEW and RCA INTERNATIONAL SERVICE CORPORATION, *Defendants*.

MEMORANDUM DECISION

Filed November 29, 1979

Plaintiffs, present or former employees of defendant RCA INTERNATIONAL SERVICE CORPORATION (hereinafter referred to as "RCA"), have filed this lawsuit against RCA and LOCAL UNION No. 2088, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO (hereinafter referred to as "the Union"), under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, and the federal declaratory judgment statutes, 28 U.S.C. §§ 2201 and 2202. They allege that as of the time of the amended complaint, they were members of a technical and plant clerical bargaining unit covered by a collective bargaining contract negotiated between RCA and the Union, effective September 1, 1978, governing the unit's wages, hours and conditions of employment. Plaintiffs further allege that the Union, as their bargaining representative, on January 16, 1979, entered into a union security agreement with RCA. They complain that this agreement is prohibited by Article

I, Section 6 of the Constitution of the State of Florida,[1] as well as *Fla. Stat.* § 447.03[2] (hereinafter collectively referred to as "the Florida right-to-work civil laws"). They also allege that the agreement violates *Fla. Stat.* § 447.14,[3] a misdemeanor provision, which incorporates *Fla. Stat.* § 447.03 by reference (hereinafter collectively referred to as "the Florida right-to-work criminal statutes"). Plaintiffs also seek reimbursement of all monies paid to the Union by plaintiffs pursuant to the agreement.

Defendants deny that the January 16 union security agreement is prohibited by the Florida right-to-work civil laws or the Florida right-to-work criminal statutes, and further assert that these laws are inapplicable in this case because the vast majority of employees in the collective bargaining unit work on the federal enclaves of Patrick Air Force Base and Cape Canaveral Air Force Station.

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[1] Fla. Const. Art. I, § 6, provides:

> The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

[2] *Fla. Stat.* § 447.03 provides:

> Employees shall have the right to self-organization, to form, join, or assist labor unions or labor organizations or to refrain from such activity, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid of protection.

[3] *Fla. Stat.* § 447.14 provides:

> Any person or labor organization who shall violate any of the provisions of this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

Plaintiffs also claim that the Union breached its duty of fair representation to them by entering into the union security agreement, and that RCA, as a party to the agreement, participated in this breach of duty and is therefore jointly liable for it. This claim is also grounded on Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185.

Following the filing of an amended complaint, the Court entered an Order on May 31, 1979, pursuant to a joint motion and stipulation of all the parties which, *inter alia*, deferred rulings on the Union's motions to dismiss and to strike, and accepted the schedule for submission of the legal issues herein for determination on cross motions for summary judgment on stipulated facts.

A Joint Stipulation As To Facts, Authenticity of Documents And Agreement With Regard to Applicable Issues of Law was thereupon filed by the parties on July 2, 1979. The Stipulation incorporates certain pertinent documents and expresses the parties' agreement as to their authenticity, as well as to certain applicable issues of law. This Stipulation also expresses the parties' belief that the material facts required for complete and final adjudication of the instant controversy are incorporated into this Stipulation.

This Memorandum Decision will set forth the Court's ruling on the parties' cross-motions for summary judgment.

I. The Facts.

The parties have stipulated to the material facts in this controversy. These stipulated facts are set forth in the following paragraphs.

All plaintiffs, with the exception of plaintiff PATRICK, are presently employed by RCA. PATRICK was employed by RCA until April 1, 1979, when he was transferred to the RCA Service Company. He is now working on the RCA GEODSS Contract in Redondo Beach, California.

RCA is a Delaware corporation with its principal place of business in New York, New York. It operates and maintains tracking and instrumentation equipment which gather and analyze scientific, engineering and flight test data on the performance of guided missiles launched from Cape Canaveral for research and development purposes. Its employees work at a number of different installations in Brevard County, Florida, including the Kennedy Space Center, the Cape Canaveral Air Force Station, and Patrick Air Force Base.

The Union was certified by the National Labor Relations Board as bargaining representative for a unit of RCA technical and plant clerical employees on March 26, 1974. Following Board certification the Union and RCA entered into several collective bargaining agreements. The most recent agreement between RCA and the Union concerning the technical and plant clerical employees became effective September 1, 1978.

The recognition clause of the September 1, 1978 agreement, which is set forth as Section 1.01, defines the scope of the bargaining unit. As this clause indicates, the Union represents RCA technical and plant clerical employees at Patrick Air Force Base, Cape Canaveral Air Force Station, and the Kennedy Space Center.[4]

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[4] Section 1.01 of the collective bargaining contract reads as follows:

> Section 1.01. EXCLUSIVE REPRESENTATION. Pursuant to the National Labor Relations Board Certification in Case No. 12-RC-4470, Unit A-1, the Company recognizes the Union as the sole and exclusive collective bargaining agency and representative, with respect to rates of pay, salaries, hours, and other conditions of employment, for all employees in occupational classifications listed in Schedule A of this Agreement, at the Air Force Eastern Test Range at Patrick Air Force Base, Cape Canaveral Air Force Station, John F. Kennedy Space Center (NASA) and other Florida mainland satellite locations as such work is assigned to the Company's Missile Test

Plaintiffs LORD, COLLETTI, FIGGATT, GRIFFIS, HAY and WAGNER are presently members of the technical and plant clerical bargaining unit. Plaintiff PATRICK was a member of this bargaining unit until transferred out of the unit on February 12, 1979. As indicated above, PATRICK was later transferred from RCA to another operation of RCA's parent corporation. Plaintiff BROWN was a member of this unit until February 16, 1979 when he was transferred out of the unit.

The primary work site of plaintiffs LORD, COLLETTI, GRIFFIS, HAY and WAGNER is Cape Canaveral Air Force Station. Plaintiff FIGGATT's primary work site is Patrick Air Force Base. Plaintiff BROWN worked at Cape Canaveral Air Force Station while employed in the collective bargaining unit. Plaintiff PATRICK worked at Patrick Air Force Base while employed in the collective bargaining unit.

As of the date the collective bargaining agreement was amended, January 16, 1979, there were one hundred and forty-seven (147) employees in the technical and plant clerical bargaining unit. Of these employees, fifteen (15) were administratively assigned to and had a primary work situs of the Kennedy Space Center; forty-four (44) were administratively assigned to and had a primary work situs of Cape Canaveral Air Force Station; and eighty-eight (88) were administratively assigned to Patrick Air Force Base. Of the eighty-eight (88) employees administratively assigned to Patrick Air Force Base, eighty-six (86) had a primary work situs of Patrick Air Force Base, and two (2) had a primary work situs of the Malibar Test Site near

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Project by its prime contractor for these locations, but EXCLUDING: All Office Clerical, Administrative, and Professional employees; all employees represented by other unions and all employees permanently assigned Down Range; all Watchmen and Guards; all Managers, Leaders, and other supervisors as defined in the Labor Management Relations Act, as amended.

Melbourne, Florida. The parties agree that the Malibar Test Site is not on lands ceded to the United States.

As of January 16, 1979, all fifteen (15) of the technical and plant clerical employees assigned to Kennedy Space Center in the unit were Union members. Thirty-seven (37) of the forty-four (44) employees assigned to Cape Canaveral Air Force Station were Union members. Eighty-three (83) of the eighty-eight (88) employees assigned to Patrick Air Force Base in the bargaining unit were likewise Union members on this date. The total of eighty-three (83) Union members includes the two (2) employees at the Malibar Test Site.

The collective bargaining agreement between the Union and RCA applies to all employees in the bargaining unit, and contains provisions whereby employees may exercise their seniority within contractual seniority groups and be awarded jobs for which they are qualified, without distinction as to whether the job is at Kennedy Space Center, Cape Canaveral or Patrick Air Force Base.

On January 16, 1979, RCA and the Union agreed to an amendment to their collective bargaining agreement. This amendment provided as follows:

> Section 3.04. UNION SHOP. It shall be a condition of employment that all employees of the Company covered by this Agreement who are members of the Union in good standing on the effective or execution date of this Agreement, whichever is later, shall remain members in good standing and those who are not members on the effective or execution date of this Agreement, whichever is later, shall on the thirty-first (31st) day following the effective or execution date of this Agreement, whichever is later, become and remain members in good standing in the Union. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after its effective or execution date, whichever is later, shall on the thirty-first

(31st) day following the beginning of each employment, become and remain members in good standing in the Union.

In negotiating and agreeing to the January 16, 1979 amendment to the collective bargaining agreement, RCA and the Union specifically relied upon the following decisions: *Oil, Chemical, and Atomic Workers, International Union v. Mobil Oil Corp.*, 426 U.S. 407 (1976); *King v. Gemini Food Services, Inc.*, 562 F.2d (4th Cir. 1977) *cert. denied*, 98 S.Ct. 1242 (1978); *King v. Gemini Food Services, Inc.*, 438 F.Supp. 964 (E.D. Va. 1976), *aff'd*, 562 F.2d 297 (4th Cir. 1977), *cert. denied*, 98 S.Ct. 1242 (1978); *Vincent v. General Dynamics Corp.*, 427 F.Supp. 786 (N.D. Tex. 1977); and *Cooper v. General Dynamics*, 378 F.Supp. 1258 (N.D. Tex. 1974), *rev'd on other grounds*, 553 F.2d 163 (5th Cir. 1976), *cert. denied*, 97 S.Ct. 2972 (1977). RCA and the Union also relied upon two (2) letters from the Attorney General of the State of Florida, the Hon. Robert L. Shevin, to the Hon. David L. Barrett, Member of the Florida House of Representatives, District 44, dated July 14, 1978 and August 25, 1978. These letters express the Attorney General's opinion that the Florida right-to-work laws are not enforceable on Cape Canaveral Air Force Station and Patrick Air Force Base, respectively.

Pursuant to the amendment to the collective bargaining agreement, either RCA or the Union notified each of the plaintiffs by January 19, 1979, that in the event they remained in the bargaining unit, they would be required to join the Union or to pay the equivalent of monthly dues to the Union commencing March 1, 1979, as a condition of continued employment.

All of the plaintiffs who remained in the unit decided not to join or rejoin the Union. Instead, they elected to pay the Union a sum equivalent to monthly dues. Thus, each plaintiff remaining in the unit has paid the Union $16.00 a month since March, 1979.

None of the plaintiffs remaining in the unit has paid the Union an initiation fee since January 16, 1979, and unless they elect to become members of the Union, they will not be required to do so.

The plaintiffs remaining in the unit have not, and will not be required to become members of the Union.

Neither plaintiff BROWN nor plaintiff PATRICK has paid any money to the Union since January 16, 1979.

No employee in the technical and plant clerical unit has ever been discharged for refusing to pay the Union a sum equivalent to Union dues.

Kennedy Space Center is located on land leased by the United States. The land on which Kennedy Space Center is located has not been ceded by the State of Florida to the United States.

The land on which Cape Canaveral Air Force Station is located has been ceded to the United States by the State of Florida. The deed of cession, dated January 25, 1955, is signed by Governor LeRoy Collins. Under the terms of the deed, exclusive jurisdiction over the ceded lands is granted to the United States, although concurrent jurisdiction is reserved for service of civil and criminal process. The cession was accepted by the United States by a letter dated October 18, 1955, signed by James H. Douglas, Under Secretary of the Air Force.

Patrick Air Force Base is also located on land ceded to the United States by the State of Florida. The deeds of cession are dated November 27, 1939, June 22, 1940 and November 22, 1940. All of the deeds were signed by Governor Fred P. Cone. Each deed grants exclusive jurisdiction over the ceded lands to the United States, with concurrent jurisdiction reserved for service of civil and criminal process. The cessions were accepted by the United States by a letter of March 4, 1940, signed by Lewis Compton, Acting Secretary of the Navy, by a letter of July 17,

1940, signed by Frank Knox, Secretary of the Navy, and by a letter of December 10, 1940, signed by James Forrestal, Secretary of the Navy, respectively.

II. The Court has Jurisdiction over this Controversy.

RCA is an "employer" within the contemplation of the National Labor Relations Act, 29 U.S.C. § 152(2). The Union is a "labor organization" within the contemplation of the National Labor Relations Act, 29 U.S.C. § 152(5). All of the plaintiffs are "employees" within the contemplation of the National Labor Relations Act, 29 U.S.C. § 152(3). Thus, all plaintiffs are entitled to the rights, privileges and protections specifically guaranteed by the National Labor Relations Act, 29 U.S.C. § 157. Plaintiffs in this action are employed in an industry affecting commerce within the contemplation of 29 U.S.C. §§ 152(6) and (7), as well as 29 U.S.C. § 185.

Members of a bargaining unit can sue under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, and the federal declaratory judgment statutes, 29 U.S.C. § 2201 and 2202, to obtain a declaratory judgment as to whether a specific clause of a collective bargaining agreement affecting the terms and conditions of their employment is null, void and unenforceable. *West Point-Pepperell, Inc. v. Textile Workers Union*, 559 F.2d 304 (5th Cir. 1967). The Fifth Circuit has specifically held that a district court may entertain an action seeking a declaratory judgment that an agency shop clause in a collective bargaining agreement violates state right-to-work legislation. *Mobil Oil Corp. v. Oil, Chemical and Atomic Workers International Union*, 483 F.2d 603, 607 (5th Cir. 1973), *rev'd on other grounds*, 504 F.2d 272 (5th Cir. 1974) (en banc), *rev'd*, 426 U.S. 407 (1976). Accordingly, I conclude that this Court has jurisdiction over plaintiffs' claim for a declaratory judgment that the union security agreement between RCA and the Union is void and unenforceable. The Court

also has jurisdiction over the plaintiffs' breach of duty of fair representation claim against both RCA and the Union, pursuant to Section 301 of the Labor Management Relations Act. *Vaca v. Sipes*, 386 U.S. 171 (1967).

III. Patrick Air Force Base and Cape Canaveral Air Force Station are Federal Enclaves.

Article I, Section 8, Clause 17 of the Constitution of the United States gives the United States the power to acquire lands for certain specified uses from the various states and to exercise "exclusive legislation" over such lands where the acquisition is with the consent of the state legislature.[4]

Lands which are ceded to the United States by the states pursuant to Clause 17 of the Constitution are known as federal enclaves. *Cooper v. General Dynamics*, 378 F.Supp. at 1261. Since "exclusive legislation", as that term is used in Clause 17, is equivalent to "exclusive jurisdiction", *Surplus Trading Co. v. Cook*, 281 U.S. 647 (1930), *Mater v. Holley*, 200 F.2d 123, 124 (5th Cir. 1952), *United States v. Cornell*, 25 F.Cas. 646, 648 (D. R.I. 1819) (Story, J.), the United States exercises exclusive jurisdiction over federal enclaves unless the deed of cession provides to the contrary, or unless the cession is not accepted by an authorized officer of the United States government as required by 40 U.S.C. § 255.[5]

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[4] Clause 17 provides:

> The Congress shall have power . . . To exercise exclusive legislation in all cases whatsoever, over [the District of Columbia], and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings . . ..

[5] 40 U.S.C. § 255 provides in pertinent part:

> Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or

In the present case it is clear, and the parties do not dispute, that Patrick Air Force Base and Cape Canaveral Air Force Station are federal enclaves over which the United States possesses exclusive jurisdiction. The deeds of cession referred to above unequivocally grant exclusive jurisdiction over the ceded lands to the United States. The mere retention of concurrent jurisdiction by the State of Florida for service of process does not affect this conclusion. *United States v. State Tax Commission of Mississippi*, 412 U.S. 363, 371-72 (1973). The cessions were all made with the consent of the Florida Legislature, which is given by *Fla. Stat.* § 6.04[6] when a deed of cession is signed by

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interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted.

[6] *Fla Stat.* § 604 provides:

Jurisdiction over such lands; now ceded to the United States. -- Whenever the United States shall contract for, purchase or acquire any land within the limits of this state for the purposes aforesaid, in either of the modes above mentioned and provided, or shall hold for such purposes lands heretofore lawfully acquired or reserved therefor, and shall desire to acquire constitutional jurisdiction over such lands

the Governor of the State, as was the case here. Finally, all of the cessions were accepted by authorized officers of the United States government, as required by 40 U.S.C. § 255.

IV. The Enforceability of the Union Security Agreement.

The Court must now examine the contentions of the parties as to the enforceability of the union security agreement. Initially, it shall be noted that the technical and plant clerical employees in the bargaining unit are employed at three geographically separate locations: Kennedy Space

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for said purposes, the Governor of this state may, upon application made to him in writing on behalf of the United States for that purpose, accompanied by the proper evidence of said reservation, purchase, contract, or acquisition of record, describing the land sought to be ceded by convenient metes and bounds, thereupon, in the name and on behalf of this state, cede to the United States exclusive jurisdiction over the land so reserved, purchased, or acquired and sought to be ceded; the United States to hold, use, occupy, own, possess, and exercise said jurisdiction over the same for the purposes aforesaid, and none other whatsoever; provided, always, that the consent aforesaid is hereby given and the cession aforesaid is to be granted and made as aforesaid, upon express condition that this state shall retain a concurrent jurisdiction with the United States in and over the land or lands so to be ceded, and every portion thereof, so far as all process, civil or criminal, issuing under authority of this state, or of any of the courts or judicial officers thereof may be executed by the proper officers thereof, upon any person amenable to the same, within the limits and extent of lands so ceded, in like manner and to like effect as if this law had never been passed; saving, however, to the United States security to their property within said limits and extent, and exemption of the same, and of said lands from any taxation under the authority of this state while the same shall continue to be owned, held, used and occupied by the United States for the purposes above expressed and intended, and not otherwise.

Center; Patrick Air Force Base; and Cape Canaveral Air Force Station. Thus analysis of the enforceability of the union security agreement is necessarily fragmented. The plaintiffs' claim with regard to Kennedy Space Center, however, can readily be disposed of.

A. *Plaintiffs Lack Standing to Assert any Violation of the Rights of the Unit Employees Working at Kennedy Space Center.*

Plaintiffs argue that the union security agreement is unenforceable with regard to those unit employees working at Kennedy Space Center. However, none of the plaintiffs work at this location.

Plaintiffs may seek redress for injuries done to them, but may not seek redress for injuries done to others. *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 166 (1972); *Hansen v. Denckla*, 357 U.S. 235, 244 (1958). They therefore lack standing to assert that the union security agreement is void and unenforceable as to those employees whose job situs is Kennedy Space Center. As to Kennedy Space Center, therefore, the Court need not reach the merits as to the enforceability or non-enforceability of the union security agreement.

B. *The Union Security Agreement is Unenforceable on the Federal Enclave of Cape Canaveral Air Force Station.*

It has already been noted that the United States possesses exclusive jurisdiction over the federal enclave of Cape Canaveral Air Force Station. This means that only federal law is applicable on the enclave. *Mater v. Holley*, 200 F.2d at 127.

However, the federal law of every enclave includes state law which was in force at the time of the cession, where such state law is not inconsistent with federal law or policy. *Pacific Coast Dairy, Inc. v. Department of Agriculture of California*, 318 U.S. 285, 294 (1943); *James Stewart & Co.*

v. Sadrakula, 309 U.S. 94 (1940); *Chicago, Rock Island and Pacific Railway Co. v. McGlinn*, 114 U.S. 542 (1885). This assures that no new federal enclave, regardless of size, will be left without laws. *Mater v. Holley*, 200 F.2d at 124. However, laws of the state adopted after the cession are without any force or effect on the federal enclave. *Pacific Coast Dairy, Inc. v. Department of Agriculture of California*, 318 U.S. at 294; *Vincent v. General Dynamics Corp.*, 427 F.Supp. at 794-95.

The Florida right-to-work laws were fully effective a number of years before the lands comprising Cape Canaveral Air Force Station were ceded to the United States.[7] It would therefore appear that those laws could have been incorporated into the federal law of the enclave at the time of the cession unless these right-to-work laws conflict with federal law or policy. Plaintiffs submit that no such conflict exists, relying upon the language of Section 14(b) of the National Labor Relations Act, 29 U.S.C. § 164(b).[8] Plain-

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[7] The Florida Constitution of 1885 was amended in 1944 to provide:

> The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union, or labor organization; provided that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer.

This provision was in effect in 1955 when jurisdiction over Cape Canaveral was ceded to the United States.

[8] In support of their position that Florida right-to-work laws preclude enforcement of union security agreements at Cape Canaveral, plaintiffs also made arguments based upon the federal Assimilative Crimes Act and upon the theory that Section 14(b) is an express or implied Congressional delegation of authority to the states to promulgate right-to-work legislation effective on federal enclaves. Because of my holding as to Cape Canaveral, I will defer discussion of these other arguments to the section dealing with Patrick Air Force Base, *infra*.

tiffs contend that federal policy is one of "benign neutrality" which neither favors nor disfavors compulsory unionism.

Defendants urge that such a conflict exists. They first assert, relying on *Oil, Chemical and Atomic Workers International Union v. Mobil Oil Corp.*, 426 U.S. 407 (1976), that federal policy favors the union or agency shop, and that this policy conflicts with the Florida right-to-work laws. In the alternative, they argue that the Florida right-to-work laws conflict with a federal policy favoring unrestricted collective bargaining.

This raises the issue as to what, if any, is the federal policy regarding union security agreements. With regard to this issue the parties to this case are one hundred eighty degrees in disagreement.

After carefully reviewing the National Labor Relations Act, as amended, particularly the proviso to section 8(a)(3) and section 14(b)[9] thereof, the Court concludes that there is not a federal policy in favor of union security agreements, but rather a federal policy which permits an agreement between an employer and the bargaining unit representative for an agency shop.[10] In the absence of this permissive legislation, such an agreement could have been, and apparently was construed to be illegal.

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[9] Section 14(b) of the National Labor Relations Act, which was added by the Taft-Hartley Amendments of 1947, reads as follows:

> Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

[10] An employee cannot be required to become a full-fledged member of the union under the federal act. *NLRB* v. *Hershey Foods Corp.*, 513 F.2d 1083 (9th Cir. 1975); *Union Starch and Refining Co.* v. *NLRB*, 186 F.2d. 1008 (7th Cir.), *cert. denied*, 342 U.S. 815 (1951).

There is then, a national federal labor policy that an agency shop is not illegal. On the other hand, because section 14(b) is also a part of federal law, it does not appear to the Court that there is a conflict between a state right-to-work law and federal policy. The Court finds therefore that the Florida right-to-work civil laws are not in conflict with any such federal law or policy. Accordingly, with respect to Cape Canaveral Air Force Station, as the Florida right-to-work civil laws had been passed and were in effect at the time of the deed of cession to the United States, and absent specific Congressional legislation to the contrary, the Court holds that said right-to-work laws are clearly applicable thereon.[11]

Defendants' final argument is that the "primary work situs" of the unit is Patrick Air Force Base, since a majority of the unit employees work at that location, and that therefore the enforceability of the union security agreement at Cape Canaveral should be governed by the determination of whether the agreement is lawful or unlawful at Patrick. Defendants rely here on the Supreme Court decision in *Mobil Oil* and the district court's opinion in the *Vincent* case.

Although both the *Mobil Oil* and *Vincent* courts utilized a primary work situs approach, both cases are distinguishable on their facts. In *Mobil Oil* all of the affected employees spent most of their working hours on the high seas, as opposed to the right-to-work State of Texas. In *Vincent*,

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[11] However, this same rationale does not extend to the inclusion of the right-to-work criminal provisions into the law of this enclave. As more fully discussed in Part IV, Section C, of this opinion, *infra*, the federal policy of neither endorsing nor disapproving of union security agreements is clearly in conflict with a state law providing criminal sanctions for noncompliance with its right-to-work laws. For the reasons discussed *infra*, therefore, the Court concludes that the Florida right-to-work criminal statutes were not also incorporated into the body of federal law applicable to Cape Canaveral Air Force Station.

all of the affected employees worked at the same geographic location, in facilities that were mostly on, but partly off, the federal enclave.

Here, however, the unit employees work in three separate geographical locations, each of which is the primary work situs of the employees working there. Thus the job situs of the union employees employed at Cape Canaveral Air Force Station is Cape Canaveral, not Patrick Air Force Base. Under such circumstances the defendants' argument fails; the union security agreement can plainly be held enforceable at one location and not at another, and the fact that most of the unit employees work at Patrick Air Force Base is not controlling.

Defendants' attempts to show a conflict between federal policy and the Florida right-to-work civil laws have not succeeded. Their primary work situs theory is also unpersuasive. The Court therefore holds that the Florida right-to-work civil laws were incorporated into the federal law governing Cape Canaveral Air Force Station at the time of the cession, and that the union security agreement between RCA and the Union is unenforceable as to those unit employees working at that location.

C. *The Union Security Agreement is Enforceable on the Federal Enclave of Patrick Air Force Base.*

Patrick Air Force Base is located on lands already ceded to the United States by 1940. The Florida right-to-work laws were not promulgated until 1943. Therefore, applying the principles discussed in the preceding section, it would appear that these laws are without force or effect on the federal enclave of Patrick Air Force Base. *United States v. State Tax Commission of Mississippi*, 412 U.S. at 369-70; *Paul v. United States*, 371 U.S. 245, 268 (1963); *Pacific Coast Dairy v. Department of Agriculture of California*, 318 U.S. at 294.

However, plaintiffs advance two additional theories to support their claim that the Florida right-to-work laws

are applicable on this enclave. The first is grounded on Section 14(b) of the National Labor Relations Act and the second rests on the Assimilative Crimes Act.

It is plaintiffs' position that Section 14(b) is an absolute delegation of power to the legislatures of the various states to enact right-to-work laws enforceable not only on the sovereign lands of the state, but also on federal enclaves located within the state over which the United States possesses exclusive jurisdiction. Under this theory the Florida right-to-work laws would be applicable on both Patrick Air Force Base and Cape Canaveral Air Force Station merely by virtue of Section 14(b).

This contention is not persuasive. Section 14(b) cannot be read so broadly.

Plaintiffs' Assimilative Crimes Act theory is also unmeritorious. That statute, 18 U.S.C. § 13, provides:

> Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

Congress can provide, of course, that state legislation is applicable on federal enclaves. One such statute is the federal Assimilative Crimes Act. The purpose of the Assimilative Crimes Act is to fill any gaps in federal criminal law governing federal enclaves by a wholesale adoption of the criminal laws of the state in which the enclave is located. However, as one might expect, federal courts have traditionally held that state criminal statutes in conflict with federal law or policy are not adopted pursuant to the

Act, because such laws do not serve the purpose of filling gaps in federal law. *Williams v. United States,* 327 U.S. 711, 717-24 (1946); *James Stewart & Co., Inc. v. Sadrakula,* 309 U.S. at 100-101; *King v. Gemini Food Services, Inc.,* 438 F.Supp. at 966; *Vincent v. General Dynamics Corp.,* 427 F.Supp. at 800.

It has already been noted that *Fla. Stat.* § 447.14 makes it a misdemeanor for the union and an employer to violate *Fla. Stat.* § 447.03 by requiring an employee, through a union security agreement, to pay an amount equivalent to dues to a labor organization. Plaintiffs contend that these Florida statutes are applicable on Patrick Air Force Base by virtue of the Assimilative Crimes Act.

As previously stated, it is the Court's conclusion that federal policy, as set forth in the National Labor Relations Act, neither endorses nor disapproves of union security agreements, and thus such agreements are not illegal under federal law. In the opinion of the Court, therefore, it would be inconsistent and in conflict with such federal policy to apply a state law on a federal enclave which makes it a crime for an employer and a union to agree to such a union security clause. In light of such conflict between the state criminal law and federal policy, therefore, the Court holds that the Florida right-to-work criminal statutes are not incorporated into the body of federal law governing Patrick Air Force Base through the Assimilative Crimes Act. *See King v. Gemini Food Services, Inc.,* 562 F.2d at 298; *King v. Gemini Food Services, Inc.,* 438 F.Supp. at 966; *Vincent v. General Dynamics Corp.,* 427 F.Supp. at 799-800.

The Court holds that neither the Florida right-to-work civil laws, nor the Florida right-to-work criminal statutes, are applicable on Patrick Air Force Base, either through the mechanism of the Assimilative Crimes Act, or by any Section 14(b) delegation theory. Therefore, the union security agreement is enforceable as to the unit employees working at Patrick Air Force Base.

V. The Breach of Duty of Fair Representation Claim.

Plaintiffs claim that the Union, by entering into a union security agreement with RCA, breached its duty of fair representation to them to the extent the agreement is unenforceable under the Florida right-to-work laws. Plaintiffs also assert that RCA, by entering into the union security agreement, "aided and abetted" the union in its breach of duty and is therefore liable as well.

First, the Court is of the opinion that such duty is the obligation of the Union as distinguished from that of the employer. On the stipulated facts before the Court, the Court finds that the Union entered into the union security agreement in good faith, and that at no time acted in an arbitrary or discriminatory manner toward any of the plaintiffs. The breach of duty of fair representations claims are therefore without merit.

VI. Damages and Attorneys' Fees.

Plaintiffs LORD, COLETTI, GRIFFIS, HAY and WAGNER, all of whom work at Cape Canaveral Air Force Station, have been required to pay the Union an amount equivalent to union dues ($16.00 per month) since implementation of the union security agreement. Thus, these plaintiffs are entitled to a judgment against the Union in the amount each paid to the Union pursuant to that agreement.

Plaintiff BROWN worked at Cape Canaveral Air Force Station while he was in the unit, but left the unit prior to implementation of the union security agreement. Plaintiff FIGGATT works at Patrick Air Force Base. Plaintiff PATRICK also worked at this location while he was in the unit, although he too never paid any money to the Union as a result of the January 16 agreement. None of these three plaintiffs are therefore entitled to damages from the Union.

All parties in this action have requested that they be awarded a reasonable attorneys' fee. These requests are denied. *Alyeska Pipeline Service Co. v. Wilderness Society,* 421 U.S. 240 (1975).

VII. Summary Judgment.

For the foregoing reasons, the Court is of the opinion that the plaintiffs' Motion for Summary Judgment should be partially GRANTED as follows: The union security agreement, insofar as it applies to unit employees working at Cape Canaveral Air Force Station, is hereby adjudged to be void and unenforceable, and the defendants should be permanently enjoined and restrained from enforcing or attempting to enforce the union security agreement as to any unit employee whose job situs is Cape Canaveral; and further the defendants should be adjudged jointly and severally liable for damages to the plaintiffs LORD, COLLETTI, GRIFFIS, HAY and WAGNER, whose job situs is Cape Canaveral Air Force Station, in the amount each has paid to the Union pursuant to such agreement.

The defendants' motions for summary judgment should be GRANTED as follows: The union security agreement insofar as it applies to unit employees working at Patrick Air Force Base, is adjudged to be enforceable; and further the claims of plaintiffs BROWN, FIGGATT, and PATRICK should be denied.

As to Kennedy Space Center, in view of the Court's finding that the plaintiffs lack standing to assert any claim concerning the facility, the Court reaches no decision as to the enforceability or nonenforceability of the union security agreement thereat.

Except as otherwise partially granted herein, the motions for summary judgment of all parties should be denied.

Each party shall bear its own costs. Separate judgment in accordance with this decision will be entered.

DATED this 29th day of November, 1979.

/s/ GEORGE C. YOUNG
Chief Judge

Copies to:
Counsel of record

IN THE UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF FLORIDA

Case No. 79-72-ORL-CIV-Y

ROBERT B. LORD, et al., *Plaintiffs,*

vs.

LOCAL UNION No. 2088, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO
and
RCA INTERNATIONAL SERVICE CORPORATION, *Defendants.*

JUDGMENT

Filed December 26, 1979

This action came on for hearing before the Court on the cross motions for summary judgment and joint submission of stipulated facts and exhibits of all the parties; and the parties having filed their respective motions for summary judgment along with Initial Briefs and Reply Briefs in support thereof, and the arguments of counsel on the issues having been duly heard, and the Court having duly rendered its Memorandum Decision on November 29, 1979 finally disposing of the parties' claims, in accordance with said Memorandum Decision, it is hereby

ORDERED AND ADJUDGED:

1. That each of the Plaintiffs Lord, Coletti, Griffis, Hay, and Wagner have and recover of and from the Defendants, Local No. 2088, IBEW and/or RCA International Service Corporation, judgment in the amount of One Hundred Forty-four Dollars ($144.00) representing monies paid by each Plaintiffs to Defendants pursuant to the Union Security Agreement during the period from January 16, 1979, to and including November 29, 1979.

2. That the Defendants, Local Union No. 2088, IBEW and RCA International Service Corporation, their agents, officers, servants and employees be and they are hereby enjoined and restrained from applying, enforcing, or attempting to enforce, any Union Security Agreement or other such provision against any employees whose job situs is Cape Canaveral Air Force Station.

3. That the claims of Plaintiffs, Brown, Figgatt and Patrick, be and they are hereby dismissed, with prejudice.

4. That Defendants are permitted to apply and enforce the Union Security Agreement to employees whose job situs is Patrick Air Force Base.

5. That each party shall bear its own costs and any attorneys' fees incurred in this action.

SO ORDERED in Chambers at Orlando, Florida.

/s/ George C. Young
Chief Judge

Dec. 26, 1979.

Copies to:
Thomas C. Garwood, Jr., Esq.
David T. Bryant, Esq.
Frank E. Hamilton, Esq.
Peter W. Zinober, Esq.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 80-5010

D.C. Docket No. 79-72-ORL-CIV-Y

ROBERT B. LORD, ET AL.,
Plaintiffs-Appellees—Cross-Appellants,

versus

LOCAL UNION NO. 2088, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO and RCA INTERNATIONAL SERVICE CORPORATION,
Defendants-Appellants—Cross-Appellees.

Appeal from the United States District Court for the Middle District of Florida.

Before TUTTLE, RONEY and VANCE, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed in part and reversed in part; and that this cause be, and the same is hereby remanded in part with directions to the said District Court in accordance with the opinion of this Court;

It is further ordered that the plaintiffs-appellees—cross-appellants pay to defendants-appellants—cross appellees, the cost on appeal to be taxed by the Clerk of this Court.

June 24, 1981

RONEY, Circuit Judge, concurring in part and dissenting in part.

ISSUED AS MANDATE: AUG. 12, 1981

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
UNIT B

No. 80-5010

ROBERT B. LORD, ET AL.,
Plaintiffs-Appellees—Cross-Appellants,

versus

LOCAL UNION NO. 2088, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO and
RCA INTERNATIONAL SERVICE CORPORATION,
Defendants-Appellants—Cross-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion 6/4/81, 5 Cir., 198—, —— F.2d ——).

Filed July 31, 1981

Before TUTTLE, RONEY and VANCE, Circuit Judges.

PER CURIAM:

(X) The Petition for Rehearing is DENIED and no member of this panel nor Judge of this Administrative Unit in regular active service having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16; Fifth Circuit Judicial Counsel Resolution of January 14, 1981), the suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ ROBERT VANCE
United States Circuit Judge

Clerk's Note: See Rule 41 FRAP and Local Rule 17 for stay of the Mandate

Opposition

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Office - Supreme Court, U.S.
FILED
NOV 30 1981
ALEXANDER L. STEVAS,
CLERK

No. 81-806

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

ROBERT B. LORD, ET AL.,
Petitioners,
v.
LOCAL UNION NO. 2088, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

Contrary to the phrasing of the question by Petitioner, we believe the question was properly stated by the Court of Appeals as:

> WHETHER THE FLORIDA "RIGHT-TO-WORK" LAW IS APPLICABLE WITHIN FEDERAL ENCLAVES OVER WHICH THE UNITED STATES HAS EXCLUSIVE JURISDICTION?

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-806

ROBERT B. LORD, ET AL.,
Petitioners,

v.

LOCAL UNION NO. 2088, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF IN OPPOSITION

REPORT OF OPINION BELOW

The opinion of the Fifth Circuit Court of Appeals is reported at 646 F.2d 1057. The opinion of the District Court is reported at 481 F.Supp. 419.

STATEMENT OF JURISDICTION

The opinion of the Fifth Circuit Court of Appeals was published on June 4, 1981. Petitioners' Petition for Rehearing En Banc was denied July 31, 1981. Since Plaintiffs did not seek or obtain stay of the Mandate, it issued on August 12, 1981, and on August 17, 1981, the District Court entered Judgment on all issues in favor of the Defendants and dismissed the case. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Petitioner has correctly set forth the statutes, but has neglected to cite the appropriate provisions of the Constitution of the United States, also material to this application. Article 1, §8, Clause 17 provides:

> The Congress shall have Power . . . To exercise exclusive Legislation in all Cases whatsoever . . . over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings. . .

Article VI, Clause 2, provides that the

> . . . Constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

STATEMENT OF THE CASE

For purposes of this Petition for Certiorari only, Respondent Local Union No. 2088 adopts the Statement of the Case filed by the Petitioner.

BASIS FOR DISTRICT COURT JURISDICTION

Jurisdiction in the District Court was based on 28 U.S.C. §1337, §2201, and §2202 and 29 U.S.C. §185.

ARGUMENT IN SUPPORT OF DENIAL OF THE PETITION

Since Petitioner seeks review of a decision of the Court of Appeals, Rule 17 sets out the considerations applicable to the Petition. This case presents no conflict with another federal Court of Appeals; nor does it conflict with a state court of last resort over a federal question. Petitioner claims that the Court of Appeals has departed from the usual course of judicial proceedings, but its argument on

that basis is meager and confusing. Petitioner also asserts that the Court of Appeals decided an important federal question which has not been settled by this Court, or in conflict with decisions of this Court. As shown below, this claim has no merit. What Petitioner really means is that the Court of Appeals decided this case correctly, in accordance with settled precedent, but different from what Petitioner had argued. Such an application does not justify an investment of this Court's resources.

THE QUESTION PRESENTED, ALTHOUGH IMPORTANT, HAS BEEN WELL SETTLED BY DECISIONS OF THIS COURT AND THE COURTS OF APPEAL

The principal issue involved in this case was well set forth by the Court of Appeals, in the first sentence of its opinion:

> This case presents the question whether the Florida right-to-work law is applicable within federal enclaves over which the United States has exclusive jurisdiction.
>
> Appendix 1a [1]

Petitioners' application opens with presentation of a table purporting to set out the relation between Federal Acreage and Total Acreage within various states. The table is somewhat misleading, since it lumps together under the general category of "Federal Acreage" all land held by the United States, without distinguishing whether it was acquired through purchase from private individuals, acquisition through eminent domain or original settlement, or whether it was ceded by a state, with the transfer of exclusive legislative jurisdiction and sovereignty.

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[1] The Court of Appeals' decision is set out in Petitioners' Appendix at pp. 1a to 14a. Page references are to appropriate pages of Petitioners' Appendix.

It is that factor, the transfer of sovereignty and legislative authority to the United States, that is involved in this case. If the legislative sovereignty has not accompanied the transfer of land to the United States, it is not an enclave; similarly, if the legislative jurisdiction has passed to the United States, then appeals for sympathy over the loss of authority in lands where "Congress has given them plenary power to establish policy" should be unavailing, since the states gave up that authority voluntarily. That Petitioner is attempting to invoke sympathy to obscure the weakness of its argument is apparent by the placement of the table in the prominent position at the commencement of the argument. The proper focus of this Court's attention ought not to be the amount of acreage[2] involved, but rather the principle of federalism, and the application of the Supremacy Clause, Article VI, Clause 2.

Petitioners strain mightily to establish that the Court of Appeals, in its well reasoned opinion, has departed from the accepted and usual course of judicial proceedings, or has departed from the settled teachings of this Court. In order for Petitioners to prevail, they must establish either that

1) a federal enclave is not really a federal enclave, so that the transfer of exclusive legislative jurisdiction to the United States does not really deprive the states of the power to legislate,

or alternatively,

2) that the adoption of § 14(b), 29 U.S.C. § 164(b) is an express retrocession by the Congress of the power to legislate in federal enclaves.

Neither argument is new, and neither requires this Court to review the decision of the Court of Appeals.

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[2] Petitioners do not make any reference to population. The vast acreages in the western states doubtless include substantial amounts of desert areas which are largely unpopulated.

I. Absent an express grant of authority, the states have no power to legislate in federal enclaves.

By definition, a federal enclave is an area in which the exclusive legislative jurisdiction of the state has been transferred to the United States, and accepted. Once the cession is complete, the state's power to regulate is gone. To get around that long settled principle, *United States v. State Tax Commission of Mississippi*, 412 U.S. 363 (1973); *Paul v. United States*, 371 U.S. 245 (1963); *Pacific Coast Dairy, Inc. v. Department of Agriculture of California*, 318 U.S. 285 (1943), Petitioners argue that the "right-to-work" laws "ought" to be given extra-territorial application. This argument has been advanced before under a number of guises and uniformly rejected. *Oil, Chemical & Atomic Workers v. Mobil Oil Corp.*, 426 U.S. 407 (1976); *Vincent v. General Dynamics Corp.*, 427 F.Supp. 786 (ND Tex 1977); *King v. Gemini Food Services, Inc.*, 438 F.Supp 964 (ED Va 1976), aff'd 562 F.2d 297 (4th Cir. 1977), cert. denied, 434 U.S. 1065, 98 S.Ct. 1242, 55 L.Ed.2d 766 (1978); *Cooper v. General Dynamics*, 378 F.Supp. 1258 (ND Tex 1974); as well as the decisions of the trial court and Court of Appeals below (10a-11a).

II. "Right-to-work" conflicts with the federal policy.

Petitioners acknowledge the clear conflict between the "right-to-work" laws and federal policy. *Retail Clerks International Assn. v. Schermerhorn*, 375 U.S. 396 (1963); *Oil, Chemical & Atomic Workers v. Mobil Oil Corp.*, supra. They fail to appreciate, however, that the Supremacy Clause and 29 U.S.C. § 158(a)(3) preclude the "federalization" of the Florida law upon cession. While Congress may have intended in §14(b) to defer to state policies, this deference extends only to areas over which the state retains the power to legislate. Once that power passes to Congress upon cession, the conflict, and the express language of 29 U.S.C. § 158(a)(3) precludes the enforcement of the "right-to-work" law on the federal enclave.

The Court of Appeals approved the District Court's summary of the law applicable to "federalization of existing law:

> [T]he federal law of every enclave includes state law which was in force at the time of the cession, where such state law is not inconsistent with federal law or policy. *Pacific Coast Dairy, Inc. v. Department of Agriculture of California*, 318 U.S. 285, 294 [63 S.Ct. 628, 630, 87 L.Ed.761] (1943); *James Stewart & Co. v. Sadrakula*, 309 U.S. 94 [60 S.Ct. 431, 84 L.Ed.270] (1940); *Chicago, Rock Island and Pacific Railway Co. v. McGlinn*, 114 U.S. 542 [5 S.Ct. 1005, 29 L.Ed.270] (1885). This assures that no new federal enclave, regardless of size, will be left without laws. *Mater v. Holley*, [5th Cir.] 200 F.2d [123] at 124. However, laws of the state adopted after the cession are without any force or effect on the federal enclave. *Pacific Coast Dairy, Inc. v. Department of Agriculture of California*, 318 U.S. at 294 [63 S.Ct. at 630]; *Vincent v. General Dynamics Corp.*, D.C., 427 F.Supp. 786 at 794-95. *Lord v. Local Union No. 2088*, 481 F.Supp. 419, 427 (M.D. Fla. 1979). (5a-6a)

The question over which the Court of Appeals and the District Court disagreed was whether the "right-to-work" law was in conflict with federal law or policy, particularly 29 U.S.C. § 158(a)(3).

The Court of Appeals clearly and correctly followed applicable precedent, consistent with the legislative history. (7a to 10a). State "right-to-work" laws do not become the "law of the enclave" upon deed of cession. They cease to have any force or effect upon land now under exclusive legislative jurisdiction of the United States.

III. Section [illegible]) is not a retrocession of legislative power to the states.

Petitioner asserts, without a clear explanation, or reference to the legislative history, that § 14(b), 29 U.S.C. § 164(b), is a retrocession to the states of the power

to prohibit union security agreements in areas which are within the legislative jurisdiction of the United States, even to the extent of passing such laws *after* the land has been ceded to the United States. The "argument" has been summarily rejected by the District Court (32a) and by the Court of Appeals (11a through 13a).

In attempting to support its argument that 14(b) is a retrocession, Petitioners cite *Offut Housing Company v. County of Sarpy*, 351 U.S. 253 (1956); *S.R.A., Inc. v. State of Minnesota*, 327 U.S. 558 (1946); *Baltimore Ship Building & Dry Dock Co. v. City of Baltimore*, 195 U.S. 375 (1904). Review of those cases demonstrates just how far Petitioner has had to stretch. These cases involve, not federal enclaves, where there was a transfer of legislative sovereignty, but rather cases where the United States has sold or otherwise transferred land, retaining a reversionary interest or mortgage. These cases do not in any way involve the legislative sovereignty of the United States, except arguably *Offut Housing Company, supra*, in which the Court found an express intention by Congress to permit the states to tax the property involved. In no case cited by Plaintiffs has this Court held that a state has the power to legislative in land where the United States exercises legislative sovereignty, without a clear expression of retrocession of such authority to the state involved. Petitioners' reliance on *Evans v. Cornman*, 398 U.S. 419 (1970) is misplaced. *Evans* is of a different nature altogether, involving the attempt by a state to deprive individuals of their right to vote, a Constitutional right jealously guarded by this Court. State restrictions on voting rights have always been subjected to a more stringent scrutiny.

Any retrocession of legislative power must be express, and may not be implied. *United States v. Mississippi Tax Commission*, 412 U.S. 363 (1973); *Hancock v. Train*, 426 U.S. 167, 48 L.Ed.2d 555 (1976); *Environmental Protection Agency v. California*, 426 U.S. 200, 48 L.Ed.2d 578 (1976). Not only has Congress failed to make clear any such intention that 14(b) authorizes

states to forbid union security agreements on federal enclaves, the reverse appears to be the case. The legislative history of 29 U.S.C. § 158(a)(3), noted by the Court of Appeals (13a), states a federal policy to permit union security agreements in areas under federal control. The discussion by the Court of Appeals (at 11a-13a) of Petitioners' "retrocession" argument is an excellent treatment we need not duplicate here.

CONCLUSION

Since the Florida "right-to-work" laws were adopted after the cession of Patrick Air Force Base, they were of no force and effect. At the time they were enacted, Florida had no legislative power over the enclave. Petioners' argument flies in the face of basic precepts of federalism, and particularly the Supremacy Clause.

As to Canaveral, the conflict between federal policy and the "right-to-work" law precludes its application to the enclave upon transfer of legislative sovereignty. It is well settled that laws in conflict with federal policy do not become "federalized" upon cession, and it is equally settled that federal policy conflicts with "right-to-work" laws.

Since Petitioners have failed to demonstrate a departure from settled precedent sufficient to justify this Court's review, the Petition for Certiorari should be denied.

Respectfully submitted,

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Counsel for Respondent Local Union No. 2088, International Brotherhood of Electrical Workers, AFL-CIO

Opposition

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No. 81-806

Supreme Court of the United States

October Term, 1981

ROBERT B. LORD, et al.,
Petitioners,

vs.

LOCAL UNION NO. 2088, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS and RCA INTERNATIONAL SERVICE CORPORATION,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT RCA INTERNATIONAL SERVICE CORPORATION

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QUESTION PRESENTED FOR REVIEW

WHETHER THE FLORIDA RIGHT-TO-WORK LAW IS APPLICABLE WITHIN THE FEDERAL ENCLAVES LOCATED IN THE STATE?

PARTIES TO THE PROCEEDING

The Petitioners are Robert B. Lord, Ralph M. Coletti, J. H. Figgatt, Fred W. Griffis, William C. Hay and A. R. Wagner.

The Respondents are Local Union No. 2088, International Brotherhood of Electrical Workers, AFL-CIO, and RCA International Service Corporation.*

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*RCA International Service Corporation is a wholly owned subsidiary of RCA Corporation. RCA International Service Corporation is affiliated with the following corporations and their subsidiaries: Blue Network Music, Inc., C.I.T. Financial Corporation, Coronet Industries, Inc., Crown Wood Products Company, 515 South Flower Street Realty Corporation, The Hertz Corporation, Jones-Plaza Realty Corporation, Laboratories RCA, Ltd., Mission Gas Corporation, National Broadcasting Company, Inc., RCA American Communications, Inc., RCA Borinquen, Inc., RCA Broadcast Systems International Corporation, RCA Cable, Inc., RCA Communications, Inc., RCA Credit Corporation, RCA Defense Electronics Corporation, RCA del Caribe, Inc., RCA Direct Marketing, Inc., RCA DISC Corporation, RCA Distributing Corporation, RCA Engineering Laboratories, Ltd., RCA Global Communications, Inc., RCA International Audio-Visuals, Inc., RCA International, Ltd., RCA International Development Corporation, RCA International Marketing S.A., RCA International Service Corporation S.A.R.L., RCA Network Services, Inc., RCA Purchasing Company, N.V., RCA Records DISC Corporation, RCA Research Laboratories, Inc., RCA Sales Corporation, Red Network Music, Inc., Sansome Realty Corporation, and Western Fruit Packers, Inc.

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No. 81-806

Supreme Court of the United States

October Term, 1981

ROBERT B. LORD, et al.,
Petitioners,

vs.

LOCAL UNION NO. 2088, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS and RCA INTERNATIONAL SERVICE CORPORATION,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT RCA INTERNATIONAL SERVICE CORPORATION

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 646 F.2d 1057. The opinion of the district court is reported at 481 F.Supp. 419.

STATEMENT OF JURISDICTION

The claimed basis for jurisdiction is set forth in the Petition.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article I, Section 8, Clause 17, of the Constitution of the United States:

> Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;
>
> . . .
>
> To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; . . . .

National Labor Relations Act, Sections 8(a)(3) and 14(b), 29 U.S.C. §§ 158(a)(3) and 164(b) (1976):

> §158. Unfair labor practices
>
> (a) It shall be an unfair labor practice for an employer—
>
> . . .
>
> (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment

to encourage or discourage membership in any labor organization: *Provided,* That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such agreement, which is the later, ...

§164. Construction of provisions

. . .

(b) Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

Assimilative Crimes Act, 18 U.S.C. § 13 (1976):

§ 13. Laws of states adopted for areas within federal jurisdiction

Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

Florida right-to-work law, collectively comprised of the following constitutional provision and statutes:

Article I, Section 6 of the Constitution of the State of Florida:

§ 6 Right to work

The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

Section 447.03 of the Florida Statutes (1979):

447.03 Employees' right of self-organization

Employees shall have the right to self-organization, to form, join, or assist labor unions or labor organizations or to refrain from such activity, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Section 447.14 of the Florida Statutes (1979):

447.14 Penalties

Any person or labor organization who shall violate any of the provisions of this part shall be guilty of misdemeanor of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

STATEMENT OF THE CASE

The statement of the case, and the basis for district court jurisdiction, are as set forth in the petition.

REASONS FOR DENYING THE WRIT

I. THIS CASE DOES NOT PRESENT AN IMPORTANT QUESTION OF FEDERAL LAW

This case involves the applicability of the Florida right-to-work law on two federal enclaves located in the state. The Court of Appeals, holding the state law to be without force and effect on Patrick Air Force Base and Cape Canaveral Air Force Station, correctly decided this narrow federal question in accordance with prior Supreme Court precedent.

Over the years there have been a number of decisions handed down by this Court involving the enforceability of various state statutes or regulations on federal enclaves.[1] *See,* e.g., *United States v. State Tax Commission,* 412 U.S. 363 (1973); *Paul v. United States,* 371 U.S. 245 (1963); *Pacific Coast Dairy, Inc. v. Department of Agriculture,* 318 U.S. 285 (1943). Such decisions have established certain important principles of enclave law. These principles, as

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1. Federal enclaves are lands which have been ceded to the United States by the states, with the consent of state legislatures, and which have then been accepted by an appropriate federal official. 40 U.S.C. § 255 (1976). After such cession the United States has exclusive jurisdiction over the enclave pursuant to Article I, Section 8, Clause 17 of the Constitution. Surplus Trading Co. v. Cook, 281 U.S. 647 (1930).

Federal lands within the public domain, or federal lands which are simply acquired in fee by the federal government, are not federal enclaves. The United States does not possess exclusive jurisdiction over such lands under the Constitution, and state legislation is effective throughout these territories. Wilson v. Cook, 327 U.S. 474, 487-88 (1946).

stated by the district court below, and quoted with approval by the Court of Appeals, are as follows:

> [T]he federal law of every enclave includes state law which was in force at the time of the cession, where such state law is not inconsistent with federal law or policy. This assures that no new federal enclave, regardless of size, will be left without laws. However, laws of the state adopted after the cession are without any force or effect on the federal enclave. (Petitioners' Appendix, pp. 5a-6a and 27a-28a). (Citations omitted).

The Court of Appeals simply applied these principles in its decision. The Fifth Circuit held that Florida's right-to-work law, which prohibits union security agreements, necessarily conflicts with section 8(a)(3) of the National Labor Relations Act, 29 U.S.C. § 158(a)(3) (1976), which permits union security agreements. Because of this conflict, the court held that Florida's right-to-work law is not incorporated into federal enclave law, regardless of the date of cession.[2]

As the Court of Appeals correctly decided, section 14(b) of the National Labor Relations Act, 29 U.S.C. § 164(b) (1976), does not eliminate this conflict. It merely provides that federal law permitting union security agreements will not preempt the states from passing right-to-work laws. The mere presence of an anti-preemptive provision in the statute, of course, does not support the argument that state right-to-work laws are applicable in federal enclaves over which the United States has exclusive jurisdiction. As the Court of Appeals noted in the decision be-

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2. The Florida right-to-work law is collectively comprised of Article I, Section 6 of the Constitution of the State of Florida (1968) and sections 447.03 and 447.14 of the Florida Statutes (1979).

low, Congress does not cede jurisdiction by implication, and when it has chosen to make certain state laws applicable on federal enclaves, it has done so in specific terms. (Petitioners' Appendix, p. 12a).

It is true, as argued by petitioners, that this case does present a question of first impression for the Supreme Court as to whether a particular type of state statute—a right-to-work law—is applicable on federal enclaves. However, this is simply a variation on a familiar theme since the enclave law principles applied by the Court of Appeals in resolving this particular question have long been settled.

There have been only a few lawsuits in other jurisdictions regarding the applicability of state right-to-work laws on federal enclaves. All of these cases, moreover, held the state right-to-work laws to be without force and effect within the federal enclaves in question. *King v. Gemini Food Services, Inc.*, 438 F.Supp. 964 (E.D. Va. 1976), *aff'd*, 562 F.2d 297 (4th Cir. 1977), *cert. denied*, 434 U.S. 1065 (1978); *Vincent v. General Dynamics Corp.*, 427 F.Supp. 786 (N.D. Tex. 1977); *Cooper v. General Dynamics*, 378 F.Supp. 1258 (N.D. Tex. 1974), *rev'd on other grounds*, 533 F.2d 163 (5th Cir. 1976), *cert. denied*, 433 U.S. 908 (1977). Significantly, this Court denied the petition for certiorari in *King v. Gemini*, where plaintiffs sought review of a Fourth Circuit decision holding that Virginia's right-to-work law with criminal sanctions was not incorporated into a federal enclave by the Assimilative Crimes Act, 18 U.S.C. § 13 (1976), because of conflict between the state criminal statute and federal law permitting union security arrangements. Thus both circuit courts to consider the applicability of state right-to-work laws on federal enclaves reached the same result, although on different grounds.

Petitioners' argument regarding the effect of the decision below is simplistic. The Court of Appeals did not effectively hold, by any means, "that Patrick and Canaveral ceased to be a part of Florida when jurisdiction was ceded to the United States." (Petition, p. 8).

Florida law in effect before the cession is still applicable on the two enclaves to the extent it does not conflict, like the right-to-work law, with federal law or policy. In addition, Florida law is applicable on the enclaves when Congress has so provided. Thus, the decision below did not sever all ties between Florida and the enclaves.

Of course, Florida no longer has the right to enact legislation effective on Patrick and Canaveral. This right passed to the federal government with the cession of exclusive jurisdiction over the two bases. Although petitioners attempt to characterize this restriction on state legislative power as a novel and far-reaching limitation on states' rights, this result is mandated by prior Supreme Court enclave cases.

Petitioners also make much ado about the federal acreage affected by the decision below. It is petitioners' theory that because the federal government owns nearly 20% of the acreage in states that have passed right-to-work laws, the decision of the Court of Appeals is necessarily significant.

The importance of a federal question cannot be measured by the acreage affected by the decision; if such were the case, this Court would be compelled to review every appellate decision involving federal lands. That is especially true in a case involving the confluence between the National Labor Relations Act and a state right-to-work law. Such a case necessarily impacts on people, not real

estate, and the overwhelming bulk of the federal acreage referred to by petitioners is unpopulated or sparsely populated land.

Furthermore, in an effort to enhance the impact of the decision below, petitioners have obscured the distinction between federal enclaves and land owned by the federal government in other ways. Thus, petitioners refer to a table showing total federal acreage in states which have enacted right-to-work laws.[3] The table shows the total acreage of all federal lands within the various states, not just lands within federal enclaves. Accordingly, even if the Court were to consider the total acreage of federal enclaves as having some bearing on the importance of the question presented for review, petitioners have failed to present the Court with accurate figures on such acreage.

The decision below is supported by strong policy considerations. First, it is desirable to have a uniform federal policy toward union security agreements on federal enclaves regardless of date of cession. Enclaves are often composed of various tracts of land ceded to the United States at various times. If this Court were to find no conflict between state right-to-work laws and federal law or policy, then the right-to-work laws would be applicable on all tracts in an enclave ceded after passage of the right-to-work law and inapplicable on all tracts in an enclave ceded before enactment of such legislation. In view of the great importance attached to union security agreements by unions, fragmented bargaining units and restricted work assignments would inevitably result.

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3. Six of the twenty states that have passed right-to-work laws are located in the old Fifth Circuit. These states contain 13,678,412 acres of federal lands. Since there are a total of 332,003,200 acres in the six states, federal lands represent 4.1% of the total acreage in the states.

Second, this Court has already held that state right-to-work laws are inapplicable to seamen whose primary work situs is on ships sailing the high seas. *Oil, Chemical and Atomic Workers v. Mobil Oil Corp.*, 426 U.S. 407 (1976). The Fifth Circuit decision below is completely consistent with that case.

Finally, a uniform policy of permission to negotiate and implement union security agreements would prevent future anomolous decisions, such as that handed down by the district court below, where right-to-work statutes imposing civil liability, but not right-to-work statutes with criminal sanctions, are incorporated into federal law governing the enclave. It is difficult to see how such decisions further either federal or state policy.

The Court of Appeals correctly decided a narrow federal question under settled principles of enclave law. This case is not so important that it should be reviewed by the Supreme Court.

II. THE DECISION BELOW IS NOT IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT

As this case presents a question of first impression for this Court, there can be no conflict between the holding of the Court of Appeals and the holding of any case previously decided by this Court. At most, petitioners can claim only a conflict in the reasoning behind the decision below and Supreme Court precedent. No such conflict exists.

Neither *Retail Clerks International Association v. Schermerhorn*, 375 U.S. 96 (1963) nor *Oil, Chemical & Atomic Workers v. Mobil Oil Corp.*, 426 U.S. 407 (1976) construe section 14(b) differently than it was construed by the Court of Appeals. In fact, the Fifth Circuit relied

on both of those cases and quoted from them in its decision. (Petitioners' Appendix, p. 9a). Furthermore, the Court of Appeals' construction of section 14(b) was firmly grounded on that provision's legislative history. (Petitioners' Appendix, p. 13a).

There is likewise no conflict between the decision below and the reasoning of the other Supreme Court cases cited by petitioners. *Offutt Housing Co. v. County of Sarpy,* 351 U.S. 253 (1956) and *Howard v. Commissioners of Sinking Fund,* 344 U.S. 624 (1953) both applied state law on federal enclaves pursuant to federal statutes which, unlike section 14(b), explicitly allowed such application. *S.R.A., Inc. v. State of Minnesota,* 327 U.S. 558 (1946) and *Baltimore Shipbuilding & Dry Dock Co. v. City of Baltimore,* 195 U.S. 375 (1904) are inapposite since they involve situations where state law was enforced on land which was no longer a federal enclave because the United States had sold the land to private parties.

Finally, the decision below does not conflict with this Court's reasoning in *Evans v. Cornman,* 398 U.S. 419 (1970). That case is a typical equal protection case where the Court concluded that residents of a federal enclave in Maryland could vote in Maryland elections. The dicta quoted by petitioners, that enclaves are not "a state within a state", certainly did not indicate any intent on the part of the Court to abandon the established principles of enclave law applied by the Court of Appeals in this case. In fact, this Court itself applied these very principles in resolving an enclave case decided after *Evans. United States v. State Tax Commission,* 412 U.S. 363 (1973).

The decision below was well reasoned. It does not conflict with Supreme Court precedent, nor does it conflict with any decision of any other court, and should not be reviewed on that ground.

CONCLUSION

For the reasons stated, the petition for certiorari should be denied.

Respectfully submitted,

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PROOF OF SERVICE

I HEREBY CERTIFY that on this 25th day of November, 1981, three copies of the Brief for Respondent RCA International Service Corporation were mailed, first-class postage prepaid to David T. Bryant, Esquire, National Right to Work Legal Defense Foundation, Inc., 8001 Braddock Road, Suite 600, Springfield, Virginia 22160, counsel for Petitioner, and to Frank Hamilton, Jr., Esquire, Hamilton & Douglas, P.A., 2620 West Kennedy Boulevard, Tampa, Florida 33609, counsel for Respondent Local Union No. 2088, International Brotherhood of Electrical Workers, AFL-CIO. I further certify that all parties required to be served have been served.

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Petitioner's Reply Brief

Office · Supreme Court, U.S.
FILED
JUN 9 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-806

Supreme Court of the United States

OCTOBER TERM, 1981

ROBERT B. LORD, ET AL.,
Petitioners,

v.

LOCAL UNION No. 2088, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONERS' REPLY TO THE GOVERNMENT'S BRIEF

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THIS CASE MEETS THE COURT'S CRITERIA FOR REVIEW.

In its brief the Government concludes that this case is not "important" enough to be reviewed by this Court. That conclusion is bottomed on the fact that there is not a division in the circuits concerning the issues presented and the Government's view that the court below correctly interpreted the interplay between Section 8(a)(3) and Section 14(b) of the National Labor Relations Act.

One of the considerations governing review on petitions for writs of certiorari by this Court is that review may be granted where a "federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court."

Certainly, questions concerning the geographic extent of the application of a state's Right to Work law are important. *Oil, Chemical and Atomic Workers* v. *Mobil Oil Co.*, 426 U.S. 407 (1976). And the fact that the courts of appeal are unanimous in an erroneous interpretation of an important federal statute is no reason for this Court not to review and correct their erroneous reasoning for the future guidance of all concerned. *E.g., International Brotherhood of Teamsters* v. *United States,* 431 U.S. 324 (1977).

The Government's position also relies on its view that Congress in enacting Section 14(b) did not clearly give to the states the power to legislate with respect to compulsory unionism on federal enclaves. That is an astounding conclusion in view of the Government's concession that Section 14(b) is a grant of legislative power to the states and the clear language of the statute.

The statute says that compulsory unionism agreements are prohibited "in any state" where they are prohibited by state law. The phrase "in any state" is all inclusive and by its very terms does not contain any exceptions. The Government argues that this statute is not like others where Congress has "adopted"

the state law as the law of federal enclaves. That is true; but, this is a different kind of statute and it is unique. There is not another statute which grants to the states legislative authority to overrule an act of Congress. Apparently, the Fifth Circuit and the Government would require Congress to word the statute as allowing Right to Work laws "in any state, *including federal enclaves within the state*" in order to make its intent clear. However, that would require Congress to engage in redundant writing. *A fortiori,* that conclusion cannot be correct.

If Congress had wished federal enclaves to be exempt from the reach of state laws prohibiting compulsory unionism, it could have said very easily "in any state, *except federal enclaves within that state*". Obviously, Congress did not do this. Therefore, the plain meaning of what Congress *did* say should be given effect.

The issues presented by the petition are open ones in this Court. They are important questions dealing with the interplay between Sections 8(a)(3) and 14(b) of the Act and they also have a direct effect on the inevitable conflict between federal and state rights which are created by our system of government.

Practically speaking, the decision below gives each one of the twenty Right to Work states the hives. For no good reason it creates little irritating pockets of compulsory unionism within each of the Right to Work states. That result is contrary to state policy specifically permitted by Congress to be established by the states with respect to this subject. That result

should not be permitted to stand unless it has the imprimatur of this Court.

Respectfully submitted,

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Office - Supreme Court, U.S.
FILED
JUN 1 1982
ALEXANDER L. STEVAS,
CLERK

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether a state right-to-work law applies to private employees whose primary work situs is an enclave within the state over which the federal government has exclusive legislative jurisdiction.

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This brief is filed in response to the Court's invitation to the Solicitor General to express the views of the United States.

STATEMENT

1. In 1979, respondents, RCA International Service Corporation (RCA) and Local Union No. 2088, International Brotherhood of Electrical Workers, AFL-CIO (the Union), signed a collective bargaining agreement applicable to all RCA technical and plant

clerical employees at a number of locations in Brevard County, Florida. Included among the covered installations were RCA employees at Cape Canaveral Air Force Station and at Patrick Air Force Base. Among the agreement's provisions was a "union shop" clause that, as implemented, required all RCA employees covered by the agreement to make monthly payments in an amount equivalent to union dues, commencing on the 31st day after the agreement's effective date or after the employee's initial date of hire, whichever was later (Pet. App. 2a-3a).[1]

Cape Canaveral is located on land that the State of Florida ceded to the United States in 1955; Patrick Air Force Base occupies land that Florida ceded to the United States in 1940 (Pet. App. 6a). In each instance, the deeds of cession granted the United States exclusive jurisdiction over the ceded land, reserving concurrent jurisdiction only for service of civil and criminal process (*ibid.*). Prior to ceding Cape Canaveral, but after ceding Patrick Air Force Base, Florida adopted certain "right-to-work" laws consisting of constitutional and statutory provisions that, *inter alia*, prohibit union security agreements such as the "union shop" clause contained in RCA's collective bargaining agreement with the Union. Fla. Const. Art. I, § 6; Fla. Stat. Ann. §§ 447.03, 447.14 (West 1981).

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[1] RCA and the Union concluded that Florida's "right-to-work" law did not bar them from negotiating such a clause because they considered such state statutes inapplicable to federal enclaves under existing law. Respondents also relied on opinions of the Attorney General of Florida expressing the view that Florida's "right-to-work" law was not enforceable on Cape Canaveral Air Force Station or Patrick Air Force Base (Pet. App. 21a).

2. Following execution of the collective bargaining agreement, petitioners commenced this action in the United States District Court for the Middle District of Florida. Relying on Section 301 of the Labor Management Relations Act of 1947 (LMRA), 29 U.S.C. 185, they sought a declaratory judgment that the union security agreement provision in question violated Florida's right-to-work laws (Pet. App. 15a-16a). In addition, they sought reimbursement of all monies they had paid to the Union as of the date of the complaint (*id.* at 16a). Respondents denied that the union shop provision violated Florida law and asserted that such state laws were inapplicable in any event because petitioners worked on federal enclaves (*ibid.*).

On cross-motions for summary judgment, the district court held that because Patrick Air Force Base was ceded to the United States prior to the enactment of Florida's right-to-work laws, Florida law could not apply there (Pet. App. 31a-33a). As to Cape Canaveral, the court held that Florida law could apply unless it conflicted with federal law or policy (*id.* at 27a-28a). The court concluded (*id.* at 29a-30a) that Section 8(a)(3) of the National Labor Relations Act (NLRA), as amended by the LMRA, 29 U.S.C. 158(a)(3),[2] permits the execution of union security agreements of the kind at issue here, while state law prohibits such agreements; but the court held that there is no conflict between the two because the NLRA as amended also contains Section 14(b),

[2] What is now 29 U.S.C. 158(a)(3) was originally Section 8(3) of the NLRA (the Wagner Act), ch. 372, 49 Stat. 452. It was amended in 1947 by the LMRA (the Taft-Hartley Act). For the sake of convenience, we refer hereafter to the NLRA, even as to those sections that were added in 1947 by the LMRA.

29 U.S.C. 164(b), which authorizes states to enact and enforce laws prohibiting union security agreements. Thus, federal policy does not favor union security agreements, the district court concluded, but merely permits them in the absence of a state law to the contrary (Pet. App. 29a-30a).

On appeals by both petitioners and respondents, the court of appeals affirmed the district court's holding that the Florida right-to-work law is inapplicable to Patrick Air Force Base and, with one judge dissenting, reversed the holding that the law applies to Cape Canaveral Air Force Station (Pet. App. 1a-14a). The court below concluded that there exists a clear conflict between Section 8(a)(3) of the NLRA permitting union security agreements and the Florida law prohibiting them and that Section 14(b) did not remove the conflict with respect to federal enclaves. The court of appeals construed Section 14(b) as permitting the application of state law "only to the area over which the state has power to legislate" (Pet. App. 10a-11a) rather than, as petitioners contended, empowering the states to apply their right-to-work laws to all areas within state borders, including federal enclaves.

ARGUMENT

1. Under Article I, Section 8, Clause 17 of the Constitution, Congress possesses authority to "exercise exclusive Legislation * * * over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings." As both courts below recognized (Pet. App. 5a, 27a), however, the federal law on such enclaves includes state law that was in force at the time of the cession unless the state law conflicts with fed-

eral law or policy. *Pacific Coast Dairy, Inc.* v. *Department of Agriculture*, 318 U.S. 285, 294 (1943). This rule serves the purpose of assuring that "no area however small will be left without a developed legal system for private rights." *James Stewart & Co.* v. *Sadrakula*, 309 U.S. 94, 100 (1940). Similarly, the current criminal law of the state also applies on federal enclaves by virtue of the Assimilative Crimes Act, 18 U.S.C. 13,[3] unless the state law conflicts with federal law or policy. *Williams* v. *United States*, 327 U.S. 711 (1946). Cf. *Johnson* v. *Yellow Cab Co.*, 321 U.S. 383, 389-390 (1944).

Under Fla. Stat. Ann. § 447.14 (West 1981), it is a misdemeanor for a union and employer to violate Fla. Stat. Ann. § 447.09(11) (West 1981), which makes it unlawful for any person to coerce or intimidate any employee in the enjoyment of his legal rights, including the right (§ 447.03) to refrain from joining or assisting unions. If that misdemeanor provision is applicable to federal enclaves in Florida, it would follow that contracts containing union security agreements covering employees whose primary work situs is in such an enclave are void. See 6A A. Corbin, *Contracts* § 1374 (1962). Thus, both under the doctrine that federal law incorporates the compatible state law existing when the

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[3] That Act provides:

> Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

enclave was ceded to the government and under 18 U.S.C. 13, which assimilates the current, compatible state law, the test is whether Florida's right-to-work provisions conflict with the federal law or policy regarding union security agreements.

2. a. Federal law bearing on union security agreements is found in Sections 8(a)(3), 8(a)(5), and 14(b) of the NLRA, 29 U.S.C. 158(a)(3), 158(a)(5), and 164(b). Section 8(a)(3), which generally forbids employers from engaging in employment discrimination based on considerations of union membership or lack thereof, contains a proviso expressly exempting from this prohibition the negotiation of union security agreements meeting certain standards.[4] The agreements permitted under the terms of the proviso are generally known as "union shop" or "agency shop" agreements, *i.e.*, agreements requiring employees to join a union or to pay dues in lieu of membership within a specified time after being hired. See *Oil, Chemical & Atomic Workers* v.

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[4] Section 8(a)(3) provides in part:

> (a) It shall be an unfair labor practice for an employer—
>
> * * * * *
>
> (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later * * *.

Mobil Oil Co., 426 U.S. 407, 409 & n.1 (1976). This proviso replaced language in the original Wagner Act that had expressly sanctioned closed shop agreements where otherwise legal, *i.e.*, agreements providing that the employer will hire only persons who belong to the union at the time of hiring. See *id.* at 409 n.1; *NLRB* v. *General Motors Corp.*, 373 U.S. 734, 738-739 (1963). Congress removed the proviso protection for closed shop agreements but retained it for the more limited union shop and agency shop agreements so as to "remedy the most serious abuses of compulsory union membership and yet give employers and unions who feel that such agreements promoted stability by eliminating 'free riders' the right to continue such arrangements." S. Rep. No. 105 (Pt. 1), 80th Cong., 1st Sess. 7 (1947). See also *NLRB* v. *General Motors Corp.*, *supra*, 373 U.S. at 738-739.

Because union security agreements of the kind permitted under Section 8(a)(3) are mandatory subjects of bargaining under the NLRA in jurisdictions in which no law forbids the making of such agreements, an employer whose employees work in such a jurisdiction violates the obligation to bargain in good faith imposed by Section 8(a)(5) of the NLRA, 29 U.S.C. 158(a)(5), if he refuses to bargain over proposals for such agreements. *NLRB* v. *General Motors Corp.*, *supra*.

In 1947 Congress also enacted Section 14(b), another provision concerned with union security agreements. Section 14(b) provides:

> Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or

application is prohibited by State or Territorial law.

This provision has been held to authorize states to prohibit agency shop agreements and union shop agreements notwithstanding the Section 8(a)(3) proviso sanctioning them. *Retail Clerks, Local 1625* v. *Schermerhorn*, 373 U.S. 746 (1963) (hereinafter "*Schermerhorn I*").[5]

b. Although this Court has considered the relationship between Section 8(a)(3) and Section 14(b) of the NLRA on several occasions, none of those decisions has concerned the application of the provisions respecting union security agreements to federal enclaves. The Court has thus not definitively answered the question whether, for purposes of federal enclave law, a state right-to-work law should be characterized as conflicting with federal law or

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[5] The provision that became Section 14(b) was originally included as Section 13 of the House bill, H.R. 3020, 80th Cong., 1st Sess. (1947). It was accepted by the Senate conferees, and the conference report explained it as follows (H.R. Conf. Rep. No. 510, 80th Cong., 1st Sess. 60 (1947)):

> Many States have enacted laws or adopted constitutional provisions to make all forms of compulsory unionism in those States illegal. It was never the intention of the National Labor Relations Act * * * to preempt the field in this regard so as to deprive the States of their powers to prevent compulsory unionism. Neither the so-called "closed shop" proviso in section 8(3) of the existing act nor the union shop and maintenance of membership proviso in section 8(a)(3) of the conference agreement could be said to authorize arrangements of this sort in States where such arrangements were contrary to State policy. To make certain that there should be no question about this, section 13 was included in the House bill. The conference agreement, in section 14(b), contains a provision having the same effect.

policy. Those opinions do, however, provide some guidance in the matter, and the decision of the court of appeals in this case rested in part on its understanding of their teachings.

In *Schermerhorn I*, *supra*, 373 U.S. at 751, this Court described the purpose of Section 14(b) as one of "prevent[ing] other sections of the [NLRA] from completely extinguishing state power over certain union-security arrangements," and it held that Section 14(b) "subjects [both union shop and agency shop agreements] to state substantive law." 373 U.S. at 757.

In *Retail Clerks, Local 1625* v. *Schermerhorn*, 375 U.S. 96, 97-98 (1963) (*"Schermerhorn II"*), the Court considered the question " 'whether the Florida courts, rather than solely the National Labor Relations Board, are tribunals with jurisdiction to enforce the State's prohibition' against an 'agency shop' clause in a collective bargaining agreement." The Court held that state courts *do* have jurisdiction to enforce such state laws, concluding (*id.* at 101) that in Section 14(b), Congress sought to prevent Section 8(a)(3) from "preempt[ing] the field" respecting union security agreements and reasoning (375 U.S. at 102) that "[s]ince it is plain that Congress left the States free to legislate in that field, we can only assume that it intended to leave unaffected the power to enforce those laws." In elaborating on this holding, the Court had occasion to discuss the "conflict between state and federal law," stating (*id.* at 102-103):

> [U]nder § 8(a)(3) a union-security agreement is permissible, for example, if the union represents the employees as provided in § 9(a) (subject to rescission of the authority to make the agreement as provided in § 8(a)(3)). Those are

> federal standards entrusted by Congress to the Labor Board. Yet even if the union-security agreement clears all federal hurdles, the States by reason of § 14(b) have the final say and may outlaw it. There is thus conflict between state and federal law; but it is conflict sanctioned by Congress with directions to give the right of way to state laws barring the execution and enforcement of union-security agreements. It is argued that if there is a violation of a state union-security law authorized by § 14(b), it is a federal unfair labor practice and that the federal remedy is the exclusive one. It is urged that that course is necessary if uniformity is to be achieved. But § 14(b) gives the States power to outlaw even a union-security agreement that passes muster by federal standards. Where Congress gives state policy that degree of overriding authority, we are reluctant to conclude that it is nonetheless enforceable by the federal agency in Washington.

Finally, in *Oil, Chemical & Atomic Workers* v. *Mobil Oil Co., supra*, in which the Court considered the question whether Texas' right-to-work law applied to agreements covering seamen who had been hired in Texas, but whose principal job situs was on the high seas, the Court once again alluded to the conflict between state and federal law. In explaining the basis for its holding that Texas law did not apply to the agreements in question, Part II of the Court's opinion stated (426 U.S. at 416-417) (footnote omitted):

> While § 8(a)(3) articulates a national policy that certain union-security agreements are valid as a matter of federal law, § 14(b) reflects Congress' decision that any State or Territory that wishes to may exempt itself from that policy.

> Section 14(b) allows a State or Territory to ban agreements "requiring membership in a labor organization as a condition of employment." We have recognized that with respect to those state laws which § 14(b) permits to be exempted from § 8(a)(3)'s national policy "[t]here is . . . conflict between state and federal law; but it is a conflict sanctioned by Congress with directions to give the right of way to state laws . . . ." *Retail Clerks* v. *Schermerhorn*, 375 U.S. 96, 103 (1963).

The Court concluded that the predominant job situs of the employees is the controlling factor for determining whether a state's laws should apply to a union security agreement (426 U.S. at 418). Part III of the opinion added that "Federal policy favors permitting [union security agreements] unless a State or Territory with a sufficient interest in the relationship expresses a contrary policy via right-to-work laws."

Justice Stevens, who was one of the five Justices joining in the Court's opinion, issued the following separate concurring statement (426 U.S. at 421):

> As I read § 14(b), the prepositional phrase "in any State or Territory" modifies the immediately preceding noun "employment." This reading is consistent with the analysis in the Court's opinion, which I join except for its suggestion that federal policy favors permitting union-shop and agency-shop agreements.

In a dissenting opinion, Justice Stewart, joined by Justice Rehnquist, expressed the view that because Texas had a legitimate concern with the process through which the seamen in question were hired, its laws should be deemed applicable to the union security agreements covering them. In explaining why the State's interest should be recognized, Justice

Stewart noted (426 U.S. at 426) that "Congress chose not to establish a uniform national rule permitting the union shop," and he expressed his understanding of the relationship of federal and state law as follows (*id.* at 427):

> To summarize, §§ 8(a)(3) and 14(b) together exhaust the federal interest in the types of union-security agreements employers and unions may make. The closed shop is absolutely prohibited. And any lesser security arrangement, though consistent with the federal interest, is sanctioned only if it harmonizes with state policy.

Justice Stewart also remarked (*id.* at 427 n.5) that "[i]t is not at all obvious that federal policy favors union-shop agreements," stating that no such inference need be drawn from the fact that Congress permitted such agreements in Section 8(a)(3) and placed the burden upon the States under Section 14(b) to prohibit them. "Had Congress placed the burden of legislating on States wishing to *legalize* the union shop, three-fourths of the States would have had to enact legislation. As § 14(b) was in fact worded, no state legislation was required to preserve the status quo." *Id.* at 428 n.5 (emphasis in original).

c. The foregoing opinions on the application of the NLRA to union security agreements are not inconsistent with the decision of the court of appeals on the narrow question of federal enclave law in this case, but neither do those decisions necessarily compel the result reached by the court below.

The court of appeals, recognizing that a conflict between the Florida right-to-work law and federal law or policy would be fatal to any claim that the state law should be assimilated into the governing law

of the enclave (see pages 4-5, *supra*), discerned a conflict between federal law and Florida's right-to-work laws because "if the operative contract provision is expressly permitted under federal law and expressly prohibited under state law a conflict is presented" (Pet. App. 9a). The court concluded that this Court had "recognized the conflict as such" in *Schermerhorn II* and in *Oil, Chemical & Atomic Workers*, although—in deference to Justice Stevens' separate statement—the court of appeals characterized the latter as a plurality opinion. It reasoned that Section 14(b) of the NLRA, rather than constituting a direction to apply state law even in an area in which Congress exercises exclusive lawmaking power, operates instead to preserve for the state its power to legislate in "the area over which the state has power to legislate" (Pet. App. 10a-11a).[6] This analysis does not require a finding that federal policy *favors* permitting the execution of union security agreements,[7]

[6] The court noted that even the broad powers granted the states under the Twenty-First Amendment did not extend state jurisdiction to the regulation or taxation of liquor transactions involving only "the importation of liquor into federal enclaves which 'are to [the state] as the territory of one of her sister states or a foreign land' [citation omitted]" (Pet. App. 11a, quoting *United States* v. *State Tax Commission*, 412 U.S. 363, 378 (1973)).

[7] In fact, there is no consistent overall federal statutory policy respecting union security agreements. The Civil Service Reform Act of 1978, for example, provides that federal employees "shall have the right to form, join, or assist any labor organization, or to refrain from any such activity" (5 U.S.C. (Supp. IV) 7102) and contains a counterpart to the employment discrimination prohibition in Section 8(a)(3) of the NLRA (5 U.S.C. (Supp. IV) 7116), but neither section is qualified by a counterpart to the Section 8(a)(3) proviso expressly permitting union security agreements. In contrast,

but simply a conclusion that Congress has provided a substantive federal rule on the subject, permitting certain types of union security agreements (and making them mandatory subjects of bargaining), and that application of that rule is necessarily inconsistent with a rule forbidding those agreements.

It is possible also, however, to read *Schermerhorn II* as not requiring this result because it does not concern the question of federal-state conflict with respect to a federal enclave located within a right-to-work state; and it is possible to infer from the dissent in *Oil, Chemical & Atomic Workers* a conception of federal substantive law (embodied in Section 8(a)(3) and Section 14(b)) as outlawing union shop or agency shop agreements in any state that prohibits them. And given Justice Stevens' concurring statement (page 11, *supra*), it is evident that only four Justices rejected that view. Under such a theory, it could be argued that there is no conflict between federal law and state right-to-work laws on the subject of union security agreements[8] and

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the Railway Labor Act, 45 U.S.C. 152 (Eleventh) goes further than the NLRA in permitting union shop and agency shop agreements—authorizing such agreements for railroad and airline employees (45 U.S.C. 151, 181) notwithstanding state right-to-work laws. *Railway Employees' Department* v. *Hanson*, 351 U.S. 225 (1956).

[8] This construction of the NLRA, however, might be viewed as inconsistent with the language of the Court's opinion in *Schermerhorn II*, which, as noted above, spoke of permitting state enforcement of the *state* prohibition. Moreover, it is not clear that the dissenting Justices in *Oil, Chemical & Atomic Workers* would have thought the Section 8(a)(3) proviso inapplicable to federal enclaves in view of the fact that Justice Stewart found it necessary (426 U.S. at 435) to "refute the

that therefore the state law may be assimilated into the federal law governing the enclave. Because, as noted above, the view of the two dissenting Justices regarding the rule of law represented by Sections 8(a)(3) and 14(b), read together, was not rejected by a majority of the Court, it cannot be said that that view is foreclosed by the holding in *Oil, Atomic, & Chemical Workers.*[9]

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notion that the high seas are a species of federal enclave." And he also faulted (*id.* at 436; citation omitted) the union petitioners for arguing that "even if the high seas are not a territory over which Congress exercises exclusive lawmaking power, the Texas rule outlawing union shops must fall because the Federal Government has pre-empted the field of maritime labor relations."

[9] We take issue with petitioners' contention (Pet. 10-12) that various decisions specifically concerned with federal enclaves warrant treating Section 14(b) as a "retrocession" of exclusive federal jurisdiction over enclaves. Retrocessions of exclusive federal legislative authority must be specific and express (*Humble Pipe Line Co.* v. *Waggoner*, 376 U.S. 369, 374 (1964); *Paul* v. *United States*, 371 U.S. 245, 263 (1963)), and when Congress desires to relinquish such authority, it does so by explicitly providing for the application of state law to the federal property or in the federal jurisdiction concerned. See, *e.g.*, 4 U.S.C. 104 (authorizing imposition of state taxes on motor fuels sold in federal enclaves); 10 U.S.C. 2671 (subjecting hunting, fishing, and trapping on military reservations to state fish and game laws). Neither the language nor the legislative history of Section 14(b) contains any such specific reference to property subject to exclusive federal legislative authority.

The cases on which petitioners rely (Pet. 11-12) for their retrocession argument do not support it. *Evans* v. *Cornman*, 398 U.S. 419 (1970), involved Maryland's refusal to grant voting rights to individuals who resided on the grounds of the National Institutes of Health, a federal enclave located within the State. The Court remarked (398 U.S. at 421-422) that the plaintiffs could be considered nonresidents of Mary-

The second view has in its favor the fact that it is more consistent with principles of federalism. It is therefore the view that this Administration favors as a matter of policy: it enhances the ability of the states to enforce their right-to-work laws.

3. Either of the preceding analyses offers a plausible means of determining whether there is a conflict between federal substantive law and state right-to-work laws for purposes of deciding the standard applicable to federal enclaves, although each analysis leads to a different result. But there is no reason for the Court to grant review in this case in order to choose between them. As we have explained above, whether or not the decision below is *required* by decisions of this Court, it seems clear that it *conflicts* with none of them; and the decision is consistent with the holding of the only other court of appeals that has

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land "only if the NIH grounds ceased to be a part of Maryland when the enclave was created[,]" and deemed this a "fiction" that had been expressly rejected in earlier cases; but it nowhere suggested that exclusive federal legislative authority over a federal enclave, secured under the applicable provision of the United States Constitution, was a fiction.

The other cited cases are similarly inapposite. In both *Howard* v. *Commissioners of the Sinking Fund of Louisville*, 344 U.S. 624 (1953), and *Offutt Housing Co.* v. *County of Sarpy*, 351 U.S. 253 (1956), the Court found a specific congressional intent to extend state taxing authority to property that would normally be exempt because of its subjection to exclusive federal jurisdiction. Two other cases cited by petitioners—*S.R.A., Inc.* v. *Minnesota*, 327 U.S. 558 (1954), and *Baltimore Shipbuilding & Dry Dock Co.* v. *Baltimore*, 195 U.S. 375 (1904)—are completely beside the point, since there the Court held only that a state may impose a tax on property as to which the federal government has previously divested itself of its exclusive proprietary interest.

considered a question involving the application of state right-to-work laws on federal enclaves.[10]

Moreover, inquiries to federal agencies (the Departments of Defense, the Interior, and Labor and the General Services Administration) have produced no evidence either that this issue has had any substantial impact on federal operations or that it affects a significant portion of the workforce in right-to-work states.[11] Private employees who work regularly on federal installations apparently number at least in the tens of thousands; but only one agency has been able to supply any figures for private employees whose predominant job situs is in right-to-work states on federal property as to which the state has ceded exclusive legislative jurisdiction to the federal government. The General Services Administration reports that the number of eight-hour positions filled by private contract employees (nearly all custodial workers or guards) who work for GSA on GSA-controlled exclusive federal jurisdiction installations in right-to-work states is slightly in excess of 400. The Department of Defense figures would obviously be higher, but the Department does not

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[10] *King* v. *Gemini Food Services, Inc.*, 438 F. Supp. 964 (E.D. Va. 1976), aff'd on opinion below, 562 F.2d 297 (4th Cir. 1977), cert. denied, 434 U.S. 1065 (1978), held that Virginia's right-to-work law conflicted with federal law and for that reason the Virginia penal provision barring the enforcement of union security agreements did not apply on a federal enclave in Virginia under the Assimilative Crimes Act.

[11] Petitioner's suggestion (Pet. 4-5) that the issue is important because right-to-work states contain large areas of "federal acreage" is without merit. The issue affects only private employees working regularly on federal enclaves in which Congress exercises exclusive legislative authority—not all private employees working on federally owned lands.

maintain private contract employee data segregated according to whether the employees' primary work situs is on an installation as to which a state has ceded exclusive legislative jurisdiction.

Similarly, although some Executive Branch agencies speculate that permitting the enforcement of union security provisions on federal enclaves in right-to-work states might increase labor conflict or otherwise harm government interests, we have been given no evidence that any such harm has occurred in the years since 1947, when the relevant statutory provisions were enacted, or since 1977, when an appellate court first ruled on an issue involving the application of state right-to-work laws on federal enclaves (see note 10, *supra*).

To be sure, the issue is significant in the abstract and is of considerable importance to petitioner Lord and other employees who work regularly on a federal enclave in a right-to-work state, who are members of a collective bargaining unit covered by an agreement containing a union security provision, and who object to being compelled to pay the equivalent of union dues to the bargaining representative. In addition, to the extent that the decision of the court below limits the application of state right-to-work laws, it may be said to impede the states' ability to enforce those laws—a result that, as we have previously noted, this Administration disfavors as a matter of policy.

The decision below, however, takes no position on the desirability of right-to-work laws and does not suggest that, where union security agreements are concerned, there should be any impairment of a state's customary legislative powers, except insofar as the states are barred from purporting to legalize the closed shop. The court of appeals' decision can be

read as holding only that state laws on this subject do not apply to private employees working on federal enclaves because Congress has already provided a law on that subject applicable to employees in those areas.

Given the absence of a conflict in the circuits, the narrow holding of the court below, and the lack of evidence that the legal issue presented affects substantial numbers of employees or interferes significantly with federal programs, it does not appear that the case satisfies this Court's standards for granting review on writ of certiorari.

CONCLUSION

Applying this Court's customary criteria for review on the merits, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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JUNE 1982

☆ U. S. GOVERNMENT PRINTING OFFICE: 1982 378241 918